Supreme Court, U.S.
FILED

931870 APR - 7 1994

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

RAYMOND B. BENZINGER,
AIDANT, INC.,
ALLEN A. IZADPANAH,
for himself and
for Aidant, Inc.
and
WALTER T. CHARLTON,

Petitioners

vs.

SIREX, USA, INC., et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR FAIRFAX COUNTY, VIRGINIA

PETITION FOR WRIT OF CERTIORARI

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All Petitioners

Questions Presented :

I. Whether Constitutional due process is violated by a Virginia Circuit Court which refused to consider strong evidence of fraud on that court by corporate director/fiduciaries and their attorneys who seized controlling corporate stock of their ward, using the subterfuge of a third party creditor, thereby evading the fiduciary duty imposed upon those fiduciaries by the Virginia Supreme Court in an earlier appeal.

II. Whether the Virginia Circuit Court violated Constitutional due process by quashing validly obtained subpoenas and punishing counsel (by a sanction of $17,500 entered on behalf of the director/ fiduciaries) for obtaining those subpoenas where (1) the subpoenas were designed to prove no debt was ever owed by the purported debtor, and (2) the alleged "creditor" was in reality not a third party

creditor but rather the director/ fiduciaries fleecing their ward(s), and (3) the subpoena process actually proved those facts.

III. Whether Virginia Circuit Court had jurisdiction to seize controlling corporate stock shares located in Maryland where the shareholder lived, by an extraterritorial and procedurally defective levy (which was issued against the wrong judgment) and whether that Court Action violates substantive and procedural due process under the principles of Shaffer v. Heitner, 433 U.S. 186, 96 S.Ct. 2569 (1977).

LIST OF THE PARTIES

Judgments and Orders in three (3) cases are sought to be reviewed. These are:

Case Number (1):

In The Circuit Court For Fairfax County, Virginia. At Law No. 93228

Sirex USA, Inc.

v.

Aidant, Inc., et al.

Petitioners Are:

Raymond B. Benzinger

Aidant, Inc.

Allen A. Izadpanah

Walter T. Charlton

Respondents Are:

Sirex, USA, Inc.

Federal Computer Corporation[1]/

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[1]/ Federal Computer Corporation is the alter ego of Robert A. Hummel, one of the Officer/Directors of Defendant below, Aidant, Inc.

The actions of Edward Gross, a member of the Virginia Bar, who was not a named party below, are also an important

Charles F. Crowe

Case No. (2):

In The Circuit Court For Fairfax County, Virginia. At Law No. 91017

87 Aidant L.P.[2]/

v.

Allen A. Izadpanah, et al.

v.

Robert A. Hummel, et al.

Petitioners Are:

Aidant, Inc.

Allen A. Izadpanah, Individually

Allen A. Izadpanah, For Aidant, Inc.

Walter T. Charlton

Respondents Are:

Robert A. Hummel

Federal Computer Corporation

Federal Microcomputer Corporation

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part of the complaints for which redress is sought in this petition.

[2]/ 87 Aidant L.P. was dismissed at an early stage of this case and is no longer a party.

Federal Management Group, Incorporated

CMI, Inc.

The Boeing Joint Venture

Charles Crowe

Cardinal Financial Services, Inc.

Leo Loevner

Case No. (3):

In The Circuit Court For Fairfax County, Virginia. At Law No. 103819

Allen A. Izadpanah

v.

Robert A. Hummel, et al.

Petitioner(s) Are:

Allen A. Izadpanah, for Aidant, Inc.

Respondents Are:

Robert A. Hummel

Federal Microcomputer Corporation

Federal Computer Corporation

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

RAYMOND B. BENZINGER,
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WALTER T. CHARLTON,

Petitioners

vs.

SIREX, USA, INC., et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR FAIRFAX COUNTY, VIRGINIA

Petitioners, RAYMOND B. BENZINGER, AIDANT, INC., ALLEN A. IZADPANAH, for himself and for Aidant, Inc. and WALTER T. CHARLTON, respectfully pray that writ of certiorari issue to review the judgments and opinions of the Circuit Court for Fairfax County, Virginia entered in three cases on various dates detailed below.

REFERENCE TO OFFICIAL AND

UNOFFICIAL REPORTS AND OPINIONS BELOW

The following unreported opinions below are reprinted in the respective numbered index following.

References to Orders In Case Number (1) above — Appendix a

Circuit Court For Fairfax County, Virginia Law No. 93228 — Pg a1 to a15

References to Orders In Case Number (2) above — Appendix b

Circuit Court For Fairfax County, Virginia Law No. 91017 — Pg b1 to b2

References to Orders In Case Number (3) above — Appendix c

Circuit Court For Fairfax County, Virginia Law No. 103819 — Pg c1 to c11

OFFICIAL OPINION REPORTED BELOW:

The Following case was reported as referenced below and is reprinted in Appendix d.

Izadpanah v. The Boeing Joint Venture, 243 Va. 81, 412 S.E.2d 708 (1992)[3]/ Virginia Supreme Court opinion in Law Case No. 91017, Appendix d, Pg d1 to d11

JURISDICTIONAL STATEMENT

(i) The orders sought to be reviewed are: Law Case No. 93228

March 30, 1993 (Ref. a, 1-4)

March 30, 1993 (Ref. a, 5-7)

August 29, 1991 (Ref. a, 8, 9)

May 3, 1991 (Ref. a, 10, 11)

Law Case No. 91017

March 23, 1993 (Ref. b, 1, 2)

Law Case No. 103813

March 23, 1993 (Ref. c, 1, 2)

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[3]/ This previous Virginia Supreme Court Opinion established the law of this case in Virginia as to the fiduciary duties of the respondent corporate directors (the fiduciaries). That duty was owed to petitioners Aidant, Inc. and Allen A. Izadpanah, Aidant, Inc's principal shareholder.

March 23, 1993 (Ref. c, 3, 4)

March 23, 1993 (Ref. c, 5, 6)

January 26, 1993 (Ref. c, 7-11)

All of the foregoing Orders were timely appealed to the Virginia Supreme Court which declined review, except the "turn-over Order" dated August 29, 1991, which Petitioners contend is VOID for want of jurisdiction over the res, and also except the Consent Order, dated May 3, 1991 which Petitioners claim is VOID because of a fraud in the inception on both Petitioners and the Fairfax County Circuit Court perpetrated by the attorney for Respondent fiduciaries. Because of the recent discovery of the various frauds on the Court and petitioners, Petitioners contend that no claims for relief which may flow from this petition are time barred.

(ii) The dates of the entry of the Orders of the Virginia Supreme Court denying review are in all three cases

November 23, 1993.

(iii) The dates of all of the Orders of the Virginia Supreme Court in all three cases denying rehearing are January 7, 1994.

(iv) This court has jurisdiction under United States Code, Title 28 § 1257 to review a final state judgment in conflict with the laws of the United States of America.

CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTION OF THE UNITED STATES OF AMERICA

Amendment V.

No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be

compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment XIV.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

PROVISIONS OF THE VIRGINIA CODE

Article 1.

Attachments Generally.

§ 8.01-533. Who may sue out attachment.

If any person has a claim, legal or equitable, to (i) any specific personal property, (ii) any debt, including rent, whether the debt is due and payable or not, (iii) damages for breach of any contract, express or implied, or (iv) damages for a wrong, or for a judgment for which no supersedeas or other appeal bond has been posted, he may sue out an attachment therefor on any one or more of the grounds stated in § 8.01-534. However, if the claim is for a debt not due and payable, no attachment shall be sued out when the only ground for the attachment is that the defendant or one of the defendants is a foreign corporation, or is not a resident of this Commonwealth, and has estate or debts owing to him within this Commonwealth. (Code 1950, § 8-519; 1954, c. 333; 1977, c. 617; 1986, c. 341; 1993, c. 841.)

Article 6.

Interrogatories.

§ 8.01-506.1. Production of book accounts or other writing compelled.-- In any proceeding under the provisions of § 8.01-506, a subpoena duces tecum may be issued for a book of accounts or other writing containing material evidence pursuant to Rule 4:9 of the Rules of the Supreme Court. However, notwithstanding the provisions of Rule 4:9, a subpoena duces tecum issued pursuant to this section may (i) be directed to a party to the case and (ii) be issued by a commissioner and may direct that evidence and any custodians subpoenaed be produced before the commissioner. If the subpoena duces tecum is against a party who is not a resident of the Commonwealth, but who has appeared in the case or been served with process in this Commonwealth, the service may be on his attorney of record.

The provisions of Rule 4:1 (c) of the Supreme Court as to protective orders shall be applicable to proceedings under this section. (1978, c. 339; 1986, c. 249; 1993, c. 267.)

Statement of Each of the Three Cases For Which This Writ Is Requested:[1]/

A. Individual Statement of The Three Related Cases:

Case (1) Sirex, U.S.A., Inc. v. Aidant, Inc., et al. et al., Circuit Court Law No. 93228.

In 1989 Edward Gross, Esquire (Gross), a member of the bar of the Commonwealth of Virginia, was hired by a collection agency on behalf of Sirex U.S.A., Inc. (Sirex). On or about December 1990 the Aidant, Inc.

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[1]/ This petition contains three cases involving essentially the same parties wherein fraud on the petitioners and the Virginia Circuit Court by officer/director/ shareholders (the fiduciaries) of a Virginia Corporation, Aidant, Inc., aided and abetted by their counsel, has become an accomplished fact. Each separate case is somewhat non-understandable standing alone.

Following this separate statement of each of the three related cases a combined statement of the three cases is presented for the purpose of outlining to the court what actually occurred, as compared to what facially occurred. Through this process it is hoped that this complex fraud is made apparent to this Honorable Court in the context of important due process violations and violations of fidelity owed by attorneys to the court system.

officer/directors fiduciaries (the fiduciaries), arranged the purchase of the debt owed Sirex by their ward, Aidant, Inc. and guaranteed by the principal Shareholder Izadpanah. The fiduciaries used Federal Computer Corporation (FCC) as the vehicle to make this purchase. FCC is the alter-ego of Robert A. Hummel, at the time an officer and director of Aidant, Inc. Gross, without informing the shareholder, his counsel or the court of his new position (as counsel to the purchasers--the fiduciaries), proceeded to extract from the shareholder's counsel (Benzinger) a consent judgment dated May 3, 1991, in the name of Sirex based upon misrepresentations (1) that the debt remained unpaid, and (2) that the shareholder remained liable on his guarantee of the corporation's debt to Sirex.

Benzinger, relying on Gross's misrepresentations, agreed to the judgment

on behalf of his client, having no viable defense against the purported third-party creditor (Sirex) that Gross claimed to represent[5]/. Gross continued the collection action, acting at all relevant times covertly for the fiduciaries.

Multiple court filings and affidavits falsely stated that Gross represented Sirex. In fact, at all times relevant herein, Gross represented Federal Computer Corporation, one of the fiduciaries, who had received an "assignment of judgment" on the underlying debt along with an "irrevocable power of attorney" (e13 and e15). The underlying debt had been settled and marked "paid in full 12/90" on Sirex's records (e27, 28) presumably through the

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[5]/ Had counsel known that Gross was enforcing the judgment in behalf of Aidant, Inc's fiduciary directors, he could have raised numerous counterclaims and setoffs against those plaintiffs/judgment creditors. Thus the need for Gross to conceal the identity of the real parties in interest is, from hindsight, apparent.

actions of Gross, at the time attorney for Sirex, in negotiating the debt payment by the fiduciaries.

After receiving the consent judgment against the shareholder, Gross obtained, by an extra-territorial service of process in Maryland where the res--the stock--was located[6]/, an attachment (albeit VOID--petitioners contend)[7]/ on the shareholder's stock. Upon challenge[8]/ of the existence of the debt which was, in fact, paid-off to

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[6]/ In the interim the shareholder had moved to Maryland. His personal property moved with him. Shaffer v. Heitner, 433 U.S. 186, 97 S.Ct. 2569 (1977).

[7]/ Petitioners contend that the court jurisdiction was never obtained for three reasons (1) the "levy" on the shareholder was not issued against any judgment against him, but rather the wrong judgment (a14) and (2) the service never happened (e31) and service occurred in Maryland not using the long arm statute.

[8]/ By the obtaining of subpoenas pursuant to Va Code § 8.01-506.1 and bringing all of the relevant facts as then known to the attention of the collection courts (See Appendices e 28, 13, 15, 17, 24).

Sirex at all times relevant to these three cases, a judgment (of $17,500) on behalf of the fiduciaries was obtained against counsel for the shareholder Raymond B. Benzinger, as a sanction, purportedly for alleged improper use of the subpoena process.

Although repeatedly brought to its attention, the trial court never considered the misrepresentation and deceit by the fiduciaries, now implicitly and clearly admitted by their counsel, and ignored the clear evidence that the debt was actually paid and thus non-existent, in quashing the subpoenas before they were honored. The attachment of all of the shareholder's stock was thereby finalized. The shareholder, and incidentally others who were transferee owners of part of the stock were thereby stripped of all ownership interest in Aidant, Inc. Remarkably, the fiduciaries (Crowe and Federal Computer

Corporation) were recognized by the collection court as "assignee of Sirex" in the orders granting the sanctions (a1, a5) but the Circuit Court ignored its duty to consider and correct the fraud(s) perpetrated in favor of enforcement of its prior rulings. The Circuit Court also ignored the Virginia Supreme Court Mandate in Boeing[9]/ which prohibited the acts complained of herein. After timely appeal, the Virginia Supreme Court declined review.

Case (2) Allen A. Izadpanah v. Robert A. Hummel, et al.; Circuit Court Law No. 91017.

Allen Izadpanah (shareholder) brought suit against officers and directors (the fiduciaries) of a corporation (Aidant, Inc.) for conversion, violation of fiduciary duties, an accounting for defalcations and diversion of corporate assets in excess of 3.5 million dollars. A

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[9]/ Izadpanah v. The Boeing Joint Venture, 243 Va. 81, 412 S.E.2d 708 (1992).

major part of the assets diverted was a large United States Government sub-contract (Boeing).

The case was dismissed after the shareholder had established a prima facie case. The Virginia Supreme Court reversed, granting a new trial and requiring the fiduciaries to prove at the new trial that all conflict of interest transactions were "fair" to the corporation, Izadpanah v. The Boeing Joint Venture, 243 Va. 81, 412 S.E.2d 708 (1992)(Boeing) (see Opinion J. Lacy, d1-5).

This case was subsequently dismissed without the new trial required by the Supreme Court of Virginia opinion, on the grounds that the shareholder had subsequently lost his stock (to the same fiduciaries sued) in a related collection action (Case No. (1) above). Timely petition for appeal was made on various grounds primarily focused upon the fraud on

the court actually perpetrated by the fiduciaries in covertly acting in the name of a third-party creditor for whom the purported debt that was, at the time, non-existent. (Because it was "paid in full", See e28).

Case (3) Allen A. Izadpanah, et al. v. Robert A. Hummel, et al., Circuit Court Law No. 103819.

The shareholder (Izadpanah) sued Hummel and his alter-ego corporation, Federal Computer Corporation, in a shareholder's derivative action for tortious interference with contract rights. This case was ultimately dismissed because the shareholder lost his stock on a paid-off corporate debt guaranteed by the shareholder, in the fraudulent collection action engineered by the fiduciaries' counsel.

B. Combined Statement of the Facts In the (Three) Cases For Which Certiorari is Requested:

This petition for certiorari seeks

review and reversal of the several State Court judgments in the three related cases. The real and principal parties in interest are the same in all three cases.[10]/

All three cases were timely appealed to the Virginia Supreme Court. These three related cases are consolidated for appeal to this court. (See exceptions to orders e33, e46 and exceptions to Commissioner's report[11]/) (e38).

Officers and directors (the fiduciaries) who were also shareholders in Aidant, Inc. (Aidant), acquired control of Aidant, Inc. Aidant at the time (early

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[10]/ Three members of the Virginia Bar are known to have aided and abetted the activities complained of herein. If this petition is granted it is respectfully suggested that respondent's counsel(s) should be named as party respondents (appellees) to this appeal.

[11]/ Exceptions to the Commissioner's report were never addressed by the trial court. Those exceptions specifically raised due process questions for other shareholders also stripped of stock by the court's actions against the principal stockholder.

1990) owed a supplier Sirex USA, Inc. a debt totalling about $40,000. That underlying debt was guaranteed by petitioner Izadpanah. Sirex had previously placed the account for collection with a collection agency, Milliken & Michaels, Inc. (Milliken).

Milliken hired Virginia collection attorney Edward Gross (Gross) to collect the debt. One of the Aidant officers and directors, Robert A. Hummel, through his close alter ego corporation Federal Computer Corporation (FCC), purchased an Aidant debt to Sirex USA, Inc. (Sirex).[12]/

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[12]/ The debt was purchased from the third-party creditor (Sirex). It is clear on the record that the fiduciaries took $27,500 from an attorney's escrow account without authorization of opposing counsel, Benzinger. (e52 testimony Crowe). It appears from the evidence of record that $5,000 of those funds were used by FCC to purchase the debt from Sirex (e13). This spending of Aidant funds, was in direct contravention of the Circuit Court's oral instructions to counsel on March 13, 1990. (e50). The exact dates of these transactions was never established in the record below because the subpoenas acquired

It is unknown precisely how the debt purchase by FCC from Sirex came about[13]/ but it appears from a collection statement (e27, 28) that it occurred before the consent judgment (on May 3, 1991) had been obtained. The underlying debt was marked "paid in full 12/90" on the records of the collection agency and this fact communicated to Sirex (e28).

During this time period Izadpanah had sued the director/fiduciaries for massive misapplication of funds and diversion of corporate properties and contracts in process to themselves.

After an eight day trial the trial court dismissed all counts. On appeal the Virginia Supreme Court reversed and remanded for a new trial (see Boeing, supra), holding that the fiduciaries had a

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to determine this information were quashed by the trial court.

[13]/ The subpoenas which would have disclosed this transaction were quashed.

duty to prove the "fairness" of all conflict of interest transactions to their corporate ward.

However, the new trial never occurred. The fiduciaries, covertly using the Sirex debt, which they had "purchased" instead of paying it off, as was their duty to Aidant, (their ward controlled by them) misrepresented (via their attorney- Gross) to Benzinger: (1) That Gross represented Sirex when, in fact, he represented FCC, one of the fiduciaries; (2) that the debt remained unpaid (which was false); (3) That Izadpanah, the principal shareholder, was still liable on his guarantee of the debt to Sirex (which also was false).

Nevertheless, believing those misrepresentations, Benzinger, after consultation with his client, Izadpanah, agreed to a consent judgment (a10).

Gross, then, without notification to Izadpanah or counsel, and based upon a

faulty levy (a14) obtained ex parte a "stock turn over order" (a8) in the name of Sirex. To obtain this Order, Gross again misrepresented to the court that he then represented Sirex and hid the fact that he represented the Aidant corporate fiduciaries to whom Izadpanah owed nothing[14]/. On the contrary, at that time those fiduciaries owed him a fiduciary duty as the principal shareholder of Aidant, their ward.

After acquiring the "turn over order" Gross attempted to levy on the stock[15]/ by service of process in Maryland, where

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[14]/ The fiduciaries had an absolute duty to pay the Sirex debt out of Aidant funds they misappropriated.

[15]/ The levy process was also defective, the levy on Izadpanah was based upon the wrong judgment and referenced the wrong judgment number as the underlying judgment. Izadpanah was never liable on Judgment #172742. See (e14). Therefore no attachment was ever supported by any validly issued writ. This defect in the jurisdictional process was also repeatedly brought to the collection court's attention without effect.

Izadpanah then lived. But aside from being extraterritorial, and thus void, actually no service of process was made.[16]/

Only then, through an inquiry made by an associate of Izadpanah's, Richard Andrews (e24), it was discovered that the entire collection process was very wrong and fraudulent because no debt to Sirex existed after "12/90" (e28).

When this bombshell information surfaced counsel for petitioners undertook an investigation (see Affidavit of petitioner's counsel Charlton and supporting documents filed with the Court (e17-e28)). After very careful consideration by three separate counsel,

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[16]/ The collection court was presented ex parte with an affidavit left at Izadpanah's former place of business. The recipient (Patti Wilson) had no authority to accept service on Izadpanah. See Affidavit of Patti Wilson (e31) disclosing this (yet another) misrepresentation to the court.

subpoenas were issued[17]/ designed to demonstrate primarily that no debt existed. However, those subpoenas were also expected to expose the multiple frauds on the Circuit Court and on petitioners Aidant and Izadpanah.

Opposing counsel reacted extremely and strongly, moving to quash the subpoenas and for sanctions, alleging it was improper to challenge or rehash the prior ruling of the court granting judgment and the court finding that the stock levy was valid. At a hearing on the motion to quash and for sanctions, the subpoenas were quashed, but only after two documents were produced by Gross which proved all of the material allegations of fraud on the court and on

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[17]/ Subpoenas are authorized pursuant to the Virginia debt collection statute, Va. Code § 8.01-506.1 to allow any party to challenge a debt balance. Virginia law also allows challenge to the authority of an attorney to act for a creditor. Petitioner's counsel did both of those things.

petitioner Izadpanah. Those documents purported to give Gross authority to act in the collection process. These were:

(1) "Assignment of Judgment" from Sirex to (fiduciary) FCC not to Gross (e13);

(2) [Irrevocable] "Power of Attorney" from Sirex to (fiduciary) FCC, not to Gross (e15).

The fraud on the court was thereby exposed. It was now proven in the record that Gross, at all relevant times, was acting not for a bona fide third-party creditor, but for the fiduciaries who were then being sued for stealing funds by the purported judgment debtor.

These facts were brought to the collection judge's attention, and to the attention of the other judge handling the remanded corporate defalcation case via motions for reconsideration and exceptions. Neither judge would re-consider their rulings which retroactively stripped

petitioner Izadpanah of all stock interests. This ruling also removed stock alienated by prior pledges to one of Izadpanah's attorneys for services rendered.

Both ongoing cases against the corporate fiduciaries were dismissed because the shareholder had "lost his stock" (to the persons sued in the defalcation cases).

Counsel Benzinger was assessed sanction punishment in the amount of $17,500 allegedly for improper use of the subpoena process. Interestingly, none of the subpoenas were ever honored by either person subpoenaed.

Petitioners seek in this petition consideration of the important due process violations in the judgments below. Those issues include undisputed extra-territorial service of process, deprivation of due process by the fraud on the Virginia court

system, the effective denial in the proceedings of right to unfettered counsel resulting in denial of the right to seek redress.

Petitioners also seek as the ultimate result of this appeal, should the petition be granted, remand with instructions for the lower court to grant sanctions against the fiduciaries, and their counsel, for fraud on the state court system and abuse of the court system by their dishonest and reprehensible acts which are now clear and utterly unrefutable on the record of these three cases below.

Preservation of Questions For Appeal:

The Federal questions in this case, primarily founded on due process, were first raised incident to the extraterritorial levy when it was discovered. Those questions were overruled by the trial court. The Virginia Supreme Court declined review. Federal questions

of due process and lack of jurisdiction over the levy by the Circuit Court were again raised by specific reference to Shaffer v. Heitner, supra, in exceptions to the collection Commissioner's report (e38). The issues of due process and right to confront your adversary were continually and repeatedly raised in motions to reconsider and exceptions below and in supporting affidavits (e17, 24, 27). The collection Circuit Court Judge, in the hearing on the motion to quash, immediately after granting the sanction and having before him the documented evidence (e13,15) of deception by Gross, which the Judge ignored, and was informed by undersigned counsel that he, the Judge, had been deceived. The judge failed to respond at all to this statement or repeated re-presentations of the evidence of fraud. The second Circuit Court Judge granted leave to file a new lawsuit for fraud on

the court, but refused to consider the plain facts before him pursuant to the issues then before him as was his duty under Boeing supra and Emrich v. Emrich, 9 Va. App. 288, 387 S.E.2d 274 (1989).

In the light of the massive sanction imposed upon counsel, counsel have determined to proceed again on the same issue in that court would be unwise, to say the least.

Summary of Argument For Granting Certiorari:

A. THE SUBPOENA PROCESS IS ESSENTIAL TO THE UNITED STATES JUDICIAL SYSTEM. DUE PROCESS IS VIOLATED BY THE SANCTIONS IMPOSED IN THIS CASE WHICH DENY ACCESS TO THAT RIGHT IN A SITUATION WHERE FRAUD IS PROVEN:

It is a most basic tenet of American Jurisprudence that both sides to any dispute have access to the subpoena process. The courts can not function properly if access to that process is

limited.[18]/ Here, the subpoena process was stopped in a situation where fraud on the Court was ultimately proven but ignored, thereby depriving the alleged debtor, who in fact owed no money, of the right to prove that fact via subpoenas.

Undersigned counsel for petitioners brings this petition for certiorari based upon this proposition:

B. A FRAUD ON THE COURT IN A COLLECTION PROCESS NECESSARILY VIOLATES DUE PROCESS:

If the violations of property rights contained in these three related cases, and continuing fraud on the court of this magnitude and of this blatant nature do not violate Constitutional due process, no state court civil violation ever will.

Every State Court has a duty to uphold

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[18]/ United States v. Nixon, 418 U.S. 683, 94 S.Ct. 3090, 41 L. Ed.2d 1039 (1974). See discussion of the subpoena rights of both Plaintiffs and Defendants in a criminal context on the highest level (The Nixon Watergate Tapes), at 418 U.S. at 713, 94 S.Ct. at 3110.

the most basic principles of justice as expressed in our Constitution and contained in the fourth, fifth and fourteenth amendments to the Constitution. To allow this process to continue as a matter of routine in Virginia and in contravention of the duty of the Virginia Courts to inquire further when allegations of fraud and deceit are alleged with specificity[19]/, it is respectfully suggested, is violative of the United States Supreme Court's duty to its citizens to maintain balance in the judicial process, for state courts as well as Federal courts, in cases where Constitutional rights are intrinsically involved.

Argument For Allowing The Writ:

The Fraudulent Collection Process:

Gross obtained a consent judgment against petitioner Izadpanah by misrepresentation that the debt was still

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[19]/ Emrich v. Emrich, supra.

unpaid to the third party creditor (Sirex) and falsely representing under oath, in an affidavit, (e1-4) that he then represented Sirex. In fact, Gross while representing the corporate fiduciaries, proceeded to levy[20]/ upon Izadpanah's stock acting in the name of Sirex. Benzinger resisted, based upon technical defenses. Benzinger at that time had no knowledge of the fraud on the court or that the debt was in fact paid but did know of technical violations of the Virginia law in the collection process. Those technical defenses were:

1. No correct fieri facias ever issued to start the levy process as required by state law;
2. The levy process relied upon that incorrect document (a14) and a "turn-over Order" was obtained in an ex-

---

[20]/ Actually there was no levy (document) but the collection court acted as if there was. The levy document referenced a judgment to which the shareholder was not a party (a14).

parte hearing without notice to the shareholder or counsel;

3. The service of process of the levy (or "turn-over Order") was never served upon either the principal shareholder or his counsel and the purported service relied upon by the court in finding it had jurisdiction was admittedly served extra-territorially in another state (Maryland, where the Petitioner resided) without using the Virginia long-arm statute. This extra-territorial service is improper and contrary to jurisdictional prerequisites for attachment of property established by this court in Shaffer v. Heitner, 433 U.S. 186, 96 S.Ct. 2569 (1977). That landmark case established the principle that a res (here the stock) located in a foreign state can not be attached by action in the state where it is not located.

Therefore, the Virginia Court never had jurisdiction to act as it did in this case.

Discovery of Misrepresentations of Fact:

While this process was on-going the principal shareholder obtained a smoking-gun document directly from Sirex which clearly stated that the debt had been "paid off" years earlier (as of 12/90) (e27, 28). That document was the revelation that the entire collection process was a fraud carried out by the principal stockholder's fellow shareholders who had disguised themselves as third-party judgment creditors to strip the stock from the principal shareholder and avoid their own fiduciary duty to account for over $3.5 millions in assets of the corporation to whom their fidelity was owed.

Co-counsel Charlton called corporate general counsel for Sirex and confirmed the fact that Sirex's books reflected no debt

due and that Sirex had never heard of the person (Gross) then acting as its corporate attorney in the collection process (e20).

Upon obtaining the foregoing evidence, and only after very careful consideration of the implications of the evidence, the shareholder's counsel (Benzinger) proceeded to press for further information via the Virginia statute authorizing any party to obtain subpoenas to determine a debt balance then alleged to be due and payable (Code §8.01-506.1). The subpoenas, both witness and duces tecum, were obtained to expose and prove the fact that the debt was paid and then to prove suspected fact of fraudulent collection activities by the fiduciaries while acting in the name of the former third-party creditor.

Counsel for the fiduciaries reacted vigorously, moving to quash the subpoenas and for sanctions against Benzinger for continuing to challenge the judgment

collection process.

More Smoking Gun Evidence of Fraud On The Court Appears:

At the hearing to quash those subpoenas and for sanctions, lead counsel for the fiduciaries represented one of the fiduciaries (Crowe). At the beginning of the hearing, Gross still claimed to represent Sirex (the third-party creditor). Only later in that hearing did Gross admit on the record for the first time that he was acting for another of the fiduciaries (FCC). He then produced in open court the purchase documents showing the debt was purchased from Sirex (e13, 15) by the fiduciaries before the judgment enforcement process even started (e27, 28. Thus, the entire fraudulent scheme was exposed as a matter of uncontroverted evidence of record in this case. All of the above described activity violated the duties imposed in this case by the Virginia Supreme Court decision in Boeing supra.

Nevertheless, and notwithstanding the foregoing facts of record, the collection judge, a judge of the Circuit Court of Fairfax County, quashed the subpoenas and granted the fiduciaries' motion for sanctions--still in the name of the now known and admitted to be fictitious third-party creditor--as being an improper and unauthorized challenge to his prior order(s) levying on the stock.

At a later hearing on the quantum of sanctions, the same Circuit Court judge allowed the attorneys perpetrating the fraud attorney's fees (as sanctions) for time spent in concocting and carrying out the fraudulent scheme and also the time spent in all of the sanctions hearings. The sanction assessment totalled $17,500, split $10,000 to one fiduciary's counsel (counsel for Crowe) and $7,500 to counsel for the other fiduciary(s) (Hummel and his alter-ego corporation Federal Computer

Corporation).

It must be re-emphasized that all of the foregoing principals were the officers and directors and shareholders of the corporation (Aidant, Inc.) that owed the underlying debt to the third-party creditor (Sirex) in the first place and that stolen funds were used by the fiduciaries to accomplish this unconscionable result.

Thus, the fraud which stripped the principal shareholder of his right to sue became an accomplished fact. The shareholder's attorneys were punished by the collection court by invoking the state equivalent of Federal Rule of Civil Procedure 11. This oppressive and unconstitutional deprivation of counsel's property was ordered by the collection (Circuit Court) judge despite the fact that all of their allegations of fraud on the court and upon their client are, in fact, true and are now proven by uncontroverted

evidence of record.

Those sanctions were imposed in favor of the offending fiduciary shareholders at a time when they were in collusion with two separate sets of their counsel to hide the truth from the court by using false affidavits of service (on the faulty levy). Then, those fiduciaries, aided and abetted by their counsel, used funds removed from cash and escrow accounts subject to their fiduciary control to purchase the debt of their ward and use it against a fellow shareholder who was attempting to vindicate the rights of the corporate ward, always misrepresenting the facts to the Court and opposing counsel. Counsel's motions for reconsideration were for naught leaving the entire fraudulent result intact.

Subsequent Hearings--Routine Dismissal Of All Shareholder Claims:

Following the successful defense of their fraudulent collection activities, it was merely a matter of routine for the

fiduciaries to move for dismissal of the pending re-trial for multi-million dollar conversion and related case for interference of contract. The grounds relied upon by the trial court were simply that the principal shareholder no longer possessed the stock and thus could not continue his lawsuit on behalf of the corporation. Another judge of the Circuit Court dismissed all claims. The Supreme Court of Virginia refused to review this sorry state of affairs, stating it found no error.

Trial Courts in Virginia, as elsewhere, clearly have a duty to inquire further when allegations of fraud and deceit are alleged with specificity, Emrich v. Emrich, 9 Va. App. 288, 387 S.E.2d 274 (1989). The failure of the entire Virginia Court system to inquire into the continuing frauds on the court and on Petitioners, violates basic Constitutional due process.

A fraud on the court which successfully carries through the entire appellate process, as here, must necessarily violate both due process and right to petition for redress. This situation is repugnant to the entire thrust of our Constitution and can be corrected only by the grant of certiorari by this court.

The specific fraudulent acts by the alleged "creditor's" counsel were alleged with complete specificity but ignored by two trial courts and the Virginia Supreme Court which refused to review all three cases. The latter is all the more non-understandable because to so ignore the fraud contradicted the previous Virginia Supreme Court Mandate in Boeing[21]/ requiring fiduciaries to prove "fairness" to their wards, the corporation and its shareholders.

This Honorable Court is respectfully

---

[21]/ Boeing, supra, (d1-6).

requested to compare "Sirex's" counsel's false representations repeatedly contained in the record below but most clearly demonstrated in his Motion to Quash Subpoenas (e5) with the assignment of judgment documents from Sirex to FCC (e13, 15) which "Sirex's" counsel was forced to disgorge at the hearing to quash the subpoenas. Also, please note the damning Sirex document (e27, 28) showing the timing and fact that no debt was ever due to Sirex during any part of the collection process by which petitioner Izadpanah lost his stock. See also letter of the other fiduciaries' counsel, validating the fraud (e10). Those documents demonstrate beyond argument the indisputable fact of the fraud on the Court system perpetrated by the fiduciaries through their dishonest counsel(s).

Conclusion:

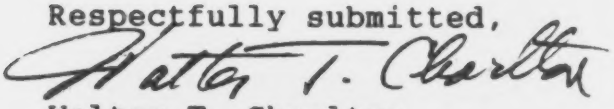
For all of the foregoing reasons, the

Constitutional issues of this case are enormously important to the integrity of the concepts of Constitutional due process in Virginia and collaterally to the various states. An attorney's effectiveness in seeking redress in a fraud situation (as here) is utterly destroyed by the acts of the Circuit Court of Fairfax County. The petition should be granted for the purpose of correcting the faulty standards applicable in the Virginia Circuit Court system, implicitly validated by the State Supreme Court which denied review. This case demonstrates that the Circuit Court gave no consideration whatever to the obligation of either the court system or its attorneys to truth and honesty and continues to allow, as a matter of routine, violations of Constitutional principles of due process and a duty of honesty owed by attorneys, who are after all, officers with a duty to all courts within our system of

justice.

For all of the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,



Walter T. Charlton
2009 N. 14th Street
Suite 410
Arlington, Virginia 22201
Counsel For the Petitioners

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VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC. March 30, 1993
Plaintiff,
v. At Law No. 93228

AIDANT, INC., et al.
Defendants.

ORDER

THIS CAUSE came before this Court on the 30th day of October (1992), the 6th day of November (1992), the 20th day of November (1992) and the 30th day of March (1993) based upon Plaintiff's Motion to Quash Subpoenas and for Sanctions; and upon the written briefs filed herein by Counsels for Plaintiff and Defendant Izadpanah and, after a full hearing before this court with all by parties presenting argument; and

IT APPEARING TO THIS COURT that four (4) subpoenas were issued to Edward Gross and Sirex, U.S.A., c/o Edward Gross as their attorney; two (2) subpoenas were directed to Sirex, U.S.A. and Edward Gross to appear before Judge Bach on October 16, 1992, and

two (2) subpoenas were issued to Edward Gross and Sirex, U.S.A., directing them to appear before Commissioner Dunn and produce documents on October 13, 1992; and it

APPEARING that all four of the subpoenas were quashed by a previously entered Order on October 23, 1992 after Counsel for Defendant Allen Izadpanah (hereinafter "Izadpanah") was given the opportunity to present argument regarding the legal authority for the issuance of subpoenas against the judgment creditor, Sirex, U.S.A., and its attorney, Edward Gross, in this matter; and it further

APPEARING that the October 23, 1992 Order stated that the issue of sanctions against the Defendant Allen A. Izadpanah and his attorney, Raymond B. Benzinger, should be heard before Judge Bach; and it

APPEARING to this Court that the subpoenas issued by Counsel for Izadpanah were not proper; and it

APPEARING to this Court that sanctions should be imposed, based upon the manner in which the subpoenas were issued and served; it is therefore

ORDERED that all previously issued subpoenas to Edward Gross and Sirex, U.S.A. to appear or produce requested documents are quashed; and it is

ORDERED that Raymond Benzinger shall be responsible for the immediate payment of sanctions to Federal Computer Corporation, assignee of Sirex, U.S.A. c/o Edward Gross at 3975 University Drive, Suite 410, Fairfax, VA 22030 in the sum of $ 10,000.00.

Entered this 30th day of March, 1993

F. Bruce Bach
Judge F. Bruce Bach

I ASK FOR THIS:

Edward Gross
Edward Gross
Counsel for Plaintiff

SEEN AND objected to for the reasons stated on the record.

Raymond B. Benzinger
Raymond Benzinger
Counsel for Defendant

Seen and Objected to for the reasons stated on the record.

W. T. Charlton
Walter Charlton
Intervenor

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC. March 30, 1993
Plaintiff,
v. At Law No. 93228

AIDANT, INC., et al.
Defendants.

ORDER

THIS CAUSE came before this Court on the 30th day of October (1992), the 6th day of November (1992), the 20th day of November (1992) and the 30th day of March (1993) based upon Plaintiff's Motion to Quash Subpoenas and for Sanctions; and upon the written briefs filed herein by Counsels for Plaintiff and Defendant Izadpanah and, after a full hearing before this court with all by parties presenting argument; and

IT APPEARING TO THIS COURT that four (4) subpoenas were issued to Charles F. Crowe, two subpoenas to appear before Judge Bach on October 16, 1992, and two (2) subpoenas were issued to Charles F. Crowe, to appear before Commissioner Dunn and produce

documents on October 13, 1992; and it

APPEARING that the subpoenas were quashed by a previously entered Order on October 23, 1992 after Counsel for Defendant Allen Izadpanah (hereinafter "Izadpanah") was given the opportunity to present argument regarding the legal authority for the issuance of subpoenas against Charles F. Crowe it further

APPEARING that the October 23, 1992 Order stated that the issue of sanctions against the Defendant Allen A. Izadpanah and his attorney, Raymond B. Benzinger, should be heard before Judge Bach; and it

APPEARING to this Court that the subpoenas issued by Counsel for Izadpanah were not proper; and it

APPEARING to this Court that sanctions should be imposed, based upon the manner in which the subpoenas were issued and served; it is therefore

ORDERED that all previously issued

subpoenas to Charles F. Crowe to appear or produce requested documents are quashed; and it is

ORDERED that Raymond Benzinger shall be responsible for the immediate payment of sanctions to Charles F. Crowe, c/o James S. Kurz, 3110 Fairview Park Drive, Falls Church, VA 22042 in the sum of $ 7,500.00; and it is

Entered this 30th day of March, 1993

F. Bruce Bach
Judge F. Bruce Bach

I ASK FOR THIS:

James S. Kurz
James S. Kurz
Counsel for Plaintiff

SEEN AND objected to for the reasons stated on the record.

Raymond B. Benzinger
Raymond Benzinger
Counsel for Defendant

Seen and Objected to for the reasons stated on the record.

W. T. Charlton
Walter Charlton
Intervenor

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX

SIREX U.S.A., INC. August 29, 1991
Plaintiff,
vs. At Law No. 93228

AIDANT, INC., ET AL.,
Defendants.

ORDER

THIS MATTER came before this Court based upon Plaintiff's Motion to Turnover Property, wherein Plaintiff seeks Defendant Allen Izadpanah to give to Plaintiff his shares of stock in Aidant, Inc.: after hearing evidence in this matter, it is

ORDERED that Allen Izadpanah shall give the Plaintiff's counsel, Edward Gross, all stock of Aidant, Inc. in his possession and any stock to which he can obtain possession; and it is

ORDERED that Aidant, Inc. shall cancel all shares of stock issued to Allen Izadpanah and reissue those shares of stock in the name of Sirex USA, Inc., which shares of stock shall be turned over to

Edward Gross, Counsel for Plaintiff: and it is

ORDERED that Allen Izadpanah shall not transfer or encumber any shares of stock of Aidant, Inc. to which he has possession or in which he has an interest, wherever such shares may be located: and it is

ORDERED that, upon receipt of such shares of stock, Edward Gross shall sell said stock by a reasonable method and apply the monies received therefrom to the debt of Defendant Allen Izadpanah to Plaintiff, with costs of sale being added to the judgment amount.

DATE: Aug. 29, 1991

W. Bruce Bach

Judge, Fairfax Circuit Court

I ASK FOR THIS:

Edward Gross
Edward Gross
Counsel for Plaintiff

A COPY TESTE:
WARREN E. BARRY,
CLERK
/S/

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC. May 3, 1991
Plaintiff,
v. At Law No. 93228

AIDANT, INC., et al.
Defendants.

CONSENT ORDER

THIS CAUSE came before this Court upon consent of all parties that a judgment should be entered against the Defendant Allen Izadpanah; it is therefore

ORDERED that a judgment in favor of Sirex U.S.A., Inc. is granted against Defendant Allen Izadpanah in the amount of $21,997.05, plus 18% interest from December 1, 1988, 15% attorney's fees and costs expended in prosecuting this action.

ENTERED THIS 3 DAY OF MAY, 1991.

signature
Judge, Fairfax Circuit Court

SEEN AND AGREED:

Edward Gross
Edward Gross
Counsel for Plaintiff

Raymond B. Benzinger
Raymond B. Benzinger
Counsel for Defendant Allen Izadpanah

COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
ACTUAL LEVY

LEVY ON: Aidant, Inc.

Serve: Charles Crowe,

Officer/Director

24 JUNE 91 OFFICE OF SHERIFF,

FAIRFAX, VIRGINIA

JUDGMENT NO 172742

CASE FILE NO L093228

TO THE SHERIFF OF FAIRFAX COUNTY

WE COMMAND YOU THAT OF THE GOODS AND CHATTELS OF

*** AIDANT, INC. ET AL ***

BE MADE THE SUM OF

40,269.65 PLUS 18% INTEREST FROM 12/01/88

REASONABLE ATTY FEES AND COSTS.

WHICH SIREX USA INC

LATE BEFORE THE FAIRFAX COUNTY CIRCUIT COURT

RECOVERED ON 02/16/90 IN THAT

*** AIDANT INC, ET AL ***

IS CONVICT AS APPEARS TO US OF RECORD.

YOU ARE FURTHER COMMANDED TO MAKE YOUR RETURN THEREON TO THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA AT ITS COURT HOUSE ON 08/26/91 NEXT RENDERED UNTO SAID

SIREX USA INC

OF THE DEBT AND COSTS OF 120.00 AND NOTIFY THE PERSON ENTITLED TO RECEIVE SUCH MONEY, IF SUCH PERSON IS KNOWN AND IF ANY MONEY IS RECEIVED AS REQUIRED BY LAW.

GIVEN UNDER MY HAND THIS 21ST DAY OF JUNE, 1991.

WARREN E. BARRY, CLERK

BY: /S/

DEPUTY CLERK

COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
ACTUAL LEVY

LEVY ON: Allen Izadpanah

24 JUNE 91 OFFICE OF SHERIFF

FAIRFAX COUNTY, VIRGINIA

JUDGMENT NO 172742

CASE FILE NO L093228

TO THE SHERIFF OF FAIRFAX COUNTY

WE COMMAND YOU THAT OF THE GOODS AND CHATTELS OF

*** AIDANT, INC. ET AL ***

BE MADE THE SUM OF

40,269.65 PLUS 18% INTEREST FROM 12/01/88 REASONABLE ATTY FEES AND COSTS.

WHICH SIREX USA INC

LATE BEFORE THE FAIRFAX COUNTY CIRCUIT COURT

RECOVERED ON 02/16/90 IN THAT

*** AIDANT INC, ET AL ***

IS CONVICT AS APPEARS TO US OF RECORD.

YOU ARE FURTHER COMMANDED TO MAKE YOUR RETURN THEREON TO THE CIRCUIT COURT OF

FAIRFAX COUNTY, VIRGINIA AT ITS COURT HOUSE ON 08/26/91 NEXT RENDERED UNTO SAID SIREX USA INC OF THE DEBT AND COSTS OF 121.50 AND NOTIFY THE PERSON ENTITLED TO RECEIVE SUCH MONEY, IF SUCH PERSON IS KNOWN AND IF ANY MONEY IS RECEIVED AS REQUIRED BY LAW.

GIVEN UNDER MY HAND THIS 21ST DAY OF JUNE, 1991.

WARREN E. BARRY, CLERK

BY: /S/

DEPUTY CLERK

VIRGINIA
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY
87 AIDANT L.P.

March 23, 1993

versus

At Law No. 91017

ALLEN A. IZADPANAH et al.

Judge Thomas A. Fortkort

versus

ROBERT A. HUMMEL et al.

ORDER

UPON CONSIDERATION of the Motion for Dismissal of Izadpanah's and Aidant's claims filed by the Cross-claim Defendants and Third-party Defendants, and after considering counsels' arguments and brief, and based upon the prior rulings, this Court finds as follows:

It is hereby ORDERED that all claims of Allen A. Izadpanah by or on behalf of Aidant, Inc. against the cross-claim defendants and the third-party defendants are dismissed with prejudice, and that all claims of Aidant, Inc. against the cross-claim defendants and the third-party defendants are dismissed with prejudice.

The Court notes that Izadpanah's

personal claims against the cross-claim defendants and the third-party defendants were previously dismissed.

It is further ORDERED that Allen A. Izadpanah pay the costs of the cross-claim defendants and the third-party defendants.

ENTER: signed
Thomas A. Fortkort
Circuit Judge

Date 3.23.93

I ask for this:

signed
James S. Kurz
Counsel for Defendants

HAZEL & THOMAS, P.C.
3110 Fairview Park Drive
Suite 1400
Falls Church, VA 22042

Seen and excepted to:

signed
Raymond B. Benzinger
Counsel for Allen A. Izadpanah

Raymond B. Benzinger, Esq.
2009 N. 14th Street
Suite 410
Arlington, VA 22201

VIRGINIA:
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

ALLEN A. IZADPANAH March 23, 1993

versus At Law #103819

ROBERT A. HUMMEL et al.

ORDER

UPON CONSIDERATION of Plaintiff Izadpanah's Motion for Reconsideration of the Court's January 26, 1993 letter ruling, it is hereby

ORDERED that the motion is DENIED.

ENTER: signed
Thomas A. Fortkort
Circuit Judge

Date: 3.23.93

I ask for this:

signed
James S. Kurz
Counsel for Defendants

HAZEL & THOMAS, P.C.
3110 Fairview Park Drive
Suite 1400
Falls Church, VA 22042

Seen and excepted to:

signed
Raymond B. Benzinger
Counsel for Allen A. Izadpanah

c1

Raymond B. Benzinger, Esq.
2009 N. 14th Street
Suite 410
Arlington, VA 22201

VIRGINIA:
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

ALLEN A. IZADPANAH

March 23, 1993

versus

At Law #103819

ROBERT A. HUMMEL et al.

ORDER

UPON CONSIDERATION of Plaintiff Izadpanah's Motion for Sanctions and Defendants' Opposition pleading, and after hearing arguments of counsel, it is hereby

ORDERED that the motion is DENIED.

ENTER: Thomas Fortkort
Thomas A. Fortkort
Circuit Judge

Date: 3.23.93

I ask for this:

J.S. Kurz
James S. Kurz
Counsel for Defendants

HAZEL & THOMAS, P.C.
3110 Fairview Park Drive
Suite 1400
Falls Church, VA 22042

Seen and excepted to:

signed
Raymond B. Benzinger
Counsel for Allen A. Izadpanah

Raymond B. Benzinger, Esq.
2009 N. 14th Street
Suite 410
Arlington, VA 22201

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

ALLEN A. IZADPANAH March 23, 1993

versus At Law #103819

ROBERT A. HUMMEL et al.

ORDER

UPON CONSIDERATION of Defendants' Motion for Dismissal, and considering the arguments of counsel, the briefs filed, and the prior findings and rulings of this court in this matter and in At Law #91017, it is hereby

ORDERED that all Plaintiff's claims in this matter are dismissed with prejudice, and that Plaintiff Allen A. Izadpanah pay costs.

ENTER: signed
Thomas A. Fortkort
Circuit Judge

Date: 3.23.93

I ask for this:

signed
James S. Kurz
Counsel for Defendants

HAZEL & THOMAS, P.C.
3110 Fairview Park Drive
Suite 1400
Falls Church, VA 22042

Seen and excepted to:

signed
Raymond B. Benzinger
Counsel for Allen A. Izadpanah

Raymond B. Benzinger, Esq.
2009 N. 14th Street
Suite 410
Arlington, VA 22201

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA
Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030

January 26, 1993

James Steward Kurz, Esq.
Hazel & Thomas
Suite 1400
3110 Fairview Park Drive
Post Office Box 12001
Falls Church, Virginia 22042

Raymond B. Benzinger, Esq.
2009 N. 14th Street, Suite 410
Arlington, Virginia 22201

Re: Izadpanah v. Hummel
At Law No. 103819

Dear Counsel:

This cause came before the Court to be heard upon a single issue framed by the Honorable F. Bruce Bach on August 7, 1992. That issue is who controls Aidant Corporation. The solution to that question resides in the events of Spring 1989.

In the latter part of 1988, Mr. Izadpanah realized that his corporation was failing and sought additional capital from Robert Hummel and Lee Loevinger[sic], principals of Federal Computer and Cardinal Financial respectively. Hummel and Loevinger [sic] agreed to provide further financing to Aidant, Inc. provided Izadpanah entered into a stock pledge agreement. In the stock pledge agreement, Izadpanah placed 200 shares of his stock in escrow and received 201 shares of common stock as additional shares. Charles Crowe was issued 101 share of common stock and

Federal Computer and Cardinal Financial each received 54 preferred shares. All these shares were designated voting stock.

The financial situation of Aidant continued to deteriorate. A meeting of the Board of Directors, who at the time were Messrs. Crowe, Izadpanah, Hummel and Loevinger [sic], was held on February 23, 1989. At that meeting, Izadpanah agreed to take a one-year leave of absence as Aidant's president and was paid $30,000.

Aidant ran a deficit in its operations according to the formula outlined in the Stock Pledge Agreement for January and February. The source of their financials statements was the company bookkeeper, Nga Agon. On March 1, 1989, Mr. Hummel declared Aidant in default by maintaining two months of negative cash flow and demanded the escrow agent transfer the pledged stock to Federal Computer and Cardinal Financial. The escrow agent never transferred the stock.

At the recent hearing of the parties, the evidence clearly showed that Aidant was in default under the stock pledge agreement by maintaining negative cash flows for January and February of 1989. This issue may have been moot prior to the most recent hearing but at this point there can be no further dispute that Aidant had defaulted by the end of business on February 28, 1989.

The issue in the case now revolves upon one narrow point. If the Hummel letter to the escrow agent effectively transferred Izadpanah's pledged stock to Cardinal Financial and Federal Computer, then all subsequent meetings called by Izadpanah had no quorum and all decisions

made at those meetings are void. Izadpanah would have retained only his 201 shares as against the 101 shares held by Crowe, 154 held by Federal Computer, 154 held by Cardinal Financial or 32.9% of the total outstanding voting shares.

If the Hummel letter was insufficient to transfer the escrowed shares to Federal Computer and Cardinal Management then Mr. Izadpanah would retain a majority interest (65.7%) of Aidant's stock. This majority interest would have been sufficient for a quorum at the April meeting at which Messrs. Crowe, Hummel and Loevinger [sic] were ousted from the Board of Directors.

Mr. Izadpanah maintains that he had the right to vote the escrowed shares at the April meeting which he called to name new directors. Authority for this position is found in the Virginia case of Cohen v. Big Stone Gap Iron Company, 111 Va. 468 (1910).

In Cohen the plaintiff loaned money to the Union Steel Company. As collateral security, Mrs. Cohen received 1495 shares of a second company (an iron company). Id. Two years after the loan was made (and before it was paid off), all of the property of the iron company was sold and conveyed to Union Steel. Id. The stock which had been pledged was still in the name of the original owner and was voted in favor of the conveyance. The two companies then apparently merged, and in 1907 Union Steel went bankrupts. Id.

Mrs. Cohen sued to try to set aside the conveyance of the iron company's assets to Union Steel. Id. The contest was between Mrs. Cohen and the creditors of the bankrupt corporation. Id. The Virginia

Supreme Court held that the sale was authorized, since the shares were still held in the name of the pledgor who "had the right, therefore, to vote the pledged stock at corporate meetings."

That ruling would appear to favor Mr. Izadpanah's position. However, in Cohen the court also imposed a good faith requirement qualifying the general rule:

> That company . . . had the right . . . to vote the pledged stock at corporate meetings, and its acts in that form would be binding upon the appellant as to any matter with the express or implied powers of the Iron Company as between the pledgor and the pledgee, **if done in good faith; and whether done in good faith or not, would be binding on the pledgee as to an innocent third party who would be prejudiced by setting aside or annulling a contract entered into by such pledgor . . .**

Id at 473. (Emphasis added).

In Cohen, the Supreme Court declined to set aside the sale in favor of Mrs. Cohen because to do so would operate to the detriment of innocent third parties, i.e., the creditors of Union Steel. Id. Therefore, the Court did not need to rule on the good faith issue. However, the language quoted does suggest a good faith analysis is warranted when setting aside the act on those grounds will not prejudice an innocent third party. Cohen suggests that when a purely internal transaction is involved, as in the present case, there is a good faith requirement. Clearly Mr. Izadpanah violated that requirement when he discharged the board which defeated a material part of his stock pledge

agreement, i.e., that he would relinquish control of Aident [sic] if it suffered two consecutive months of losses. Good faith required that Mr. Izadpanah abide by his agreement, even if the shares were wrongully [sic] withheld from Hummel and Loevinger [sic] by the escrow agent.

The answer, then, to the question before this Court as to the control of Aidant is that after March 1, 1989, control of Aidant was in the board of Loevinger [sic], Hummel and Crowe based on the agreement among the parties and the fact that the agent should have delivered the shares. That situation remains unchanged through the present dates as any acts taken by Izadpanah's board choices were in violation of his stock pledge agreement and he had no power to call meetings as a minority stockholder. Counsel for Mr. Hummel will please prepare an order on the basis of this letter opinion, forward it to counsel for endorsement as to form and forward it to this Court for entry.

Very truly yours,
signature
Thomas A. Fortkort

TAF/llr

IZADPANAH v. THE BOEING JOINT VENTURE
243 Va. 81 (1992)
January 10, 1992
Present: All the Justices

Raymond B. Benzinger (Walter T. Charlton, on briefs), for appellants.
James S. Kurz (Kurz, Koch & Doland, on brief), for appellees

Record No. 901568
Circuit Court No. Law 91017

JUSTICE LACY delivered the opinion of the Court.

This litigation began when a creditor of Aidant, Incorporated, a vendor of used computers, sued to recover on a promissory note, naming Aidant and the personal guarantors, Allen A. Izadpanah and Charles F. Crowe, the corporate president and vice-president of Aidant, respectively, as defendants. Izadpanah denied liability and asserted multiple claims against Crowe and other third-party defendants in 19 separate counts. Seven counts were dismissed on the third-party defendants' motion for summary judgment. The original creditor took a non-suit prior to trial and Izadpanah's

remaining counts against the third-party defendants were tried in an eight-day bench trial. At the hearing, Izadpanah called 14 witnesses, including all individual third-party defendants, who testified as adverse witnesses. At the close of Izadpanah's evidence, the third-party defendants made a motion to strike which the trial court granted.

Izadpanah has assigned a number of errors in this appeal. However, the dispositive issue is whether the trial court properly granted the motion to strike.

In considering a motion to strike, the trial court must view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the plaintiff. Any reasonable doubt as to whether the plaintiff has produced sufficient evidence of the wrong alleged must be resolved in the plaintiff's favor

and the motion to strike denied. Von Lubowiecki v. Donnell, 235 Va. 131, 132, 366 S.E.2d 90, 91 (1988). This well-established standard is not altered even though, as here, all but two of the third-party defendants' witnesses had testified and the trial court had "heard all of the major players to the case . . . ."

Applying these principles, we hold that the trial court improperly granted the motion to strike in this case. Even though the testimony of Izadpanah conflicted with that of other witnesses regarding a number of Izadpanah's allegations, the trial court stated that "[e]ssentially, Mr. Izadpanah's testimony does support the allegations as they are made in the bill of complaint." Nevertheless, the trial court proceeded to weigh the evidence and entered findings of fact, contrary to the standards applicable to consideration of a motion to strike. Higgins v. Bowdoin, 238 Va. 134, 141, 380

S.E.2d 904, 908 (1989); Williams v. Vaughan, 214 Va. 307, 310, 199 S.E.2d 515, 517-18 (1973).

Furthermore, a party challenging the actions of the board of directors has the burden of proving that the challenged action was not undertaken in accordance with the directors' good faith business judgment of the best interests of the corporation. Code § 13.1-690(D). However, when a conflict of interest as defined in § 13.1-691 exists, such as izadpanah presented here, the burden shifts to the directors to show that their actions complied with the requirements of that section. Giannotti v. Hamway, 239 Va. 14, 24, 387 S.E.2d 725, 731 (1990). Whether the defendants met their burden of proof cannot be resolved when considering a motion to strike.

Accordingly, we will reverse the judgment of the trial court and remand the

case for a new trial.

Reversed and remanded.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 7th day of January, 1994.

Aidant, Inc., et al., Appellants,

against Record No. 930910
Circuit Court No. L-93228

Sirex, U.S.A., Inc., et al., Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellants to set aside the judgment rendered herein on the 23rd day of November, 1993 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

David B. Beach
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 23rd day of November, 1993.

Aidant, Inc., et al., Appellants,

against Record No. 930910
Circuit Court No. L-93228

Sirex, U.S.A., Inc., et al., Appellees.

From the Circuit Court of Fairfax County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

Justice Lacy did not participate in the consideration of this case.

A Copy,

Teste:

David B. Beach, Clerk

By: Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 7th day of January, 1994.

87 Aidant, L.P., et al., Appellants,

against Record No. 930875
Circuit Court No. L-91017

Robert A. Hummel, et al., Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellants to set aside the judgment rendered herein on the 23rd day of November, 1993 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

David B. Beach
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 23rd day of November, 1993.

87 Aidant, L.P., et al., Appellants,

against Record No. 930875
Circuit Court No. L-91017

Robert A. Hummel, et al., Appellees.

From the Circuit Court of Fairfax County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

Justice Lacy did not participate in the consideration of this case.

A Copy,

Teste:

David B. Beach, Clerk

By: Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 7th day of January, 1994.

Allen A. Izadpanah, et al., Appellants,

against Record No. 930874
Circuit Court No. L-103819

Robert A. Hummel, et al., Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellants to set aside the judgment rendered herein on the 23rd day of November, 1993 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

David B. Beach
Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 23rd day of November, 1993.

Allen A. Izadpanah, et al., Appellants,

against Record No. 930874
Circuit Court No. L-103819

Robert A. Hummel, et al., Appellees.

From the Circuit Court of Fairfax County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

Justice Lacy did not participate in the consideration of this case.

A Copy,

Teste:

David B. Beach, Clerk

By: Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC.
Plaintiff,
v. At Law No. 93228

AIDANT, INC., et al.
Defendants

AFFIDAVIT

STATE OF Virginia)
) To-Wit
COUNTY OF Fairfax)

THIS DAY, Edward Gross, attorney and agent for Sirex U.S.A., Inc. personally appeared before me Katherine Viracello a Notary Public, and made oath as follows:

1. That he is the attorney and authorized agent for Sirex U.S.A., Inc.

2. That on September 18, 1992, Plaintiff by its attorney, caused a Commissioners hearing to be held on this cause. Defendant Allen A. Izadpanah's attorneys Raymond Benzinger and Walter Charlton stated that they had possession of corporate records and stock of Aidant, Inc. Defendant Izadpanah stated that his

attorneys knew about his interest in Compuland and Compuland of Virginia.

3. Resulting from said hearing, on September 22, 1992, a Commissioner's Order and a Supplemental Commissioner's Report was issued by Commissioner Charles C. Dunn.

4. The Commissioner's Order required Defendant Izadpanah and his attorneys, Raymond Benzinger and Walter Charlton, to either produce corporate records of Aidant, Inc. for inspection by Plaintiff's attorneys and/or Defendant Izadpanah to appear for further questioning in connection thereto; or, if Defendant's attorneys contest the Order, to obtain within fourteen (14) days a determination from the Circuit Court that they are enjoined from producing these records.

5. Neither Defendant nor his attorneys have sought a construction of the Order nor have they produced and turned over to Plaintiff's attorney the corporate records

of Aidant, Inc.; therefore, the corporate records of Aidant Inc. in Izadpanah, his agent or his attorney's possession must be turned over.

6. The Commissioner's Order further required Defendant Izadpanah to produce such records and information as he or his agents (including his attorneys) have reflecting Defendant's interest in a company known as Compuland and/or Compuland of Virginia, and provide said information to Plaintiff's attorney within fourteen (14) days from the date of said Commissioner's Report.

7. Neither Defendant nor his attorneys have produced and turned over the records or information relating to Defendant's interest in Compuland or Compuland of Virginia.

8. The Supplemental Commissioner's Report requires Defendant Izadpanah and his attorneys Benzinger and Charlton to comply

with Judge Bach's Order to turn over any and all stock in Aidant, Inc. to counsel for the Plaintiff.

9. Both Defendant and his attorneys refuse to produce and turned over Defendant's stock in Aidant, Inc. to Plaintiff's attorney.

GIVEN under my hand this 23rd day of February, 1993.

signed
Edward Gross
Agent and attorney for
Sirex U.S.A., Inc.

SUBSCRIBED, SWORN AND ACKNOWLEDGED to before me this 23rd day of February, 1993.

signature
Notary Public

VIRGINIA
IN THE CIRCUIT COURT OF FAIRFAX COUNT

SIREX U.S.A., INC.
Plaintiffs,
v. At Law No. 93228

AIDANT, INC. et al.
Defendants.

MOTION TO QUASH SUBPOENAS
AND FOR SANCTIONS

COMES NOW, Plaintiff, Sirex U.S.A., Inc. (hereinafter referred to as Sirex), by counsel, GROSS & WEXELL, Edward Gross, and files this Motion to Quash Subpoenas and For Sanctions, stating to the Court as follows:

FACTS

1. On October 7, 1992, Edward Gross, Esquire (hereinafter "Mr. Gross"), counsel to Sirex, was served with a Subpoena Duces Tecum to appear before Commissioner Charles Dunn on October 13, 1992.

2. On October 7, 1992, Mr. Gross, counsel to Sirex, was also served with a Witness Subpoena to appear at a hearing before Judge Bach on October 16, 1992.

3. On October 8, 1992, Mr. Gross, Custodian of Records for Sirex, was served with a Subpoena Duces Tecum to appear before Commissioner Charles Dunn on October 13, 1992.

4. On October 8, 1992, Mr. Gross, Custodian of Records for Sirex, was also served with a Witness Subpoena to appear at a hearing before Judge Bach on October 16, 1992.

5. Edward Gross is the attorney for Sirex, which is a judgment creditor based upon a consent judgment entered against the judgment debtor Allen A. Izadpanah (hereinafter "Izadpanah") one and one-half (1 1/2) years ago. Mr. Gross, as counsel to Sirex, is in the process of enforcing its judgment against Izadpanah.

GROUNDS TO QUASH SUBPOENAS

6. Since Sirex is a judgment creditor and Mr. Gross is their Counsel, there is no proper grounds or basis for the issuance of

the above mentioned subpoenas. They have been issued solely for harassment purposes.

7. No hearing has been scheduled before Commissioner Dunn on October 13, 1992 by counsel to Izadpanah, nor is the nature of the hearing known to Mr. Gross.

8. Judge Bach is unavailable on October 16, 1992 and, thus, a hearing could not properly be heard on that day. Again Mr. Gross has no knowledge as to the nature of the October 16 hearing.

9. Since a final judgment has been entered, there can be no reason for the judgment debtor's attorney to obtain a subpoena. The only outstanding issue is how the debtor will pay the judgment.

10. A review of the subpoenaed documents indicated that the judgment debtor is attempting to re-open the underlying case and re-litigate a judgment to which it consented.

11. For the reasons set forth above,

defendant's subpoenas ought to be quashed.

SANCTIONS

12. Counsel for the defendant is obviously seeking to improperly use the subpoena process to harass the judgment creditor and its attorney.

13. The fact that hearings were not even set for the subpoena return days reinforces this contention.

14. Mr. Benzinger, has continually re-argued the underlying case and reargued collection orders. In each case, he has lost these attempts to re-open the case and he is now abusing the legal process with more severe tactics.

15. For the reasons set forth above, sanctions ought to be imposed against Izadpanah and his attorney, Mr. Benzinger.

WHEREFORE, SIREX U.S.A., INC., respectfully requests that this Court: (1) quash all of the subpoenas directed toward Edward Gross, Esquire and Sirex U.S.A.,

Inc.; (2) enter an Order prohibiting defendant Izadpanah and his counsel, from issuing any further subpoenas in this matter; and (6) to order significant monetary sanctions against defendant Izadpanah and his attorney, Raymond B. Benzinger, Esquire.

Respectfully submitted,

SIREX U.S.A., INC.
By Counsel

Edward Gross
Edward Gross, VA Bar #19676
Shirley F. Keisler, VA Bar #32317
Gross & Wexell
3975 University Drive
Suite 410
Fairfax, VA 22030
(703) 273-1400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October 1992, a true copy of the foregoing Motion to Quash Subpoenas and for Sanctions was telefaxed to:

Raymond B. Benzinger
2009 N. 14th Street
Suite 410
Arlington, VA 22201
Counsel for Defendant

/s/
Edward Gross

KURZ KOCH & DOLAND
Suite 260
1250 Twenty-Fourth Street, N.W.
Washington, D.C. 20037
(202) 463-6666
FAX (202) 463-6386

October 8, 1991

Raymond B. Benzinger, Esq.
2009 N. 14th Street
Suite 410
Arlington, VA 22201

Walter T. Charlton, Esq.
1710 Rhode Island Avenue, N.W.
Suite LL
Washington, D.C. 20036

Re: At law #91017/Appeal No. 901568

Gentlemen:

As you probably are now aware, Allen Izadpanah is no longer a shareholder of Aidant, Inc. Judge Bach signed an order on August 29, 1991 directing that the corporation cancel Izadpanah's shares and reissue those to SIREX U.S.A. Izadpanah had failed to pay a $40,000 judgment obtained by SIREX against him.

In late September, Aidant did exactly as directed. On October 3, 1991, SIREX sold those shares back to the corporation.

Under applicable law, an individual may pursue a derivative action on behalf of a corporation only so long as he continues as a shareholder. If he sells or otherwise loses his shares, the derivative action either is dismissed or abates. In this instance, because there are no shareholders other than Charles Crowe, Federal Computer and Cardinal Financial--all defendants in this action--the derivative action must be dismissed.

Given this development, Izadpanah's derivative claims in At Law #91017 should be dismissed, as should be any other derivative actions initiated by Izadpanah on behalf of Aidant. As I understand your appeal, six of the nine remaining Assignments of Error are linked to the derivative claims.

If the six Assignments of Error are withdrawn, what would survive of Izadpanah's Assignments of Error in his

appeal are his challenges (1) to the granting of the motions to strike on his claim of a conspiracy against him individually; (2) to the summary judgment rulings on Counts I and III as they apply to Izadpanah individually; and (3) to the exclusion of his expert witness during the testimony of other witnesses (solely on the question of negative cash flow).

Please advise me whether you will voluntarily dismiss Izadpanah's derivative claims and withdraw the six related Assignments of Error from further consideration by the Supreme Court of Virginia.

I look forward to your response.

Very truly yours,
/s/
James S. Kurz

cc: David S. Kovach, Esq.
Kenneth Kaufman, Esq.

ASSIGNMENT OF JUDGMENT

For and in consideration of the sum of five thousand dollars ($5,000.00), Sirex U.S.A., Inc. ("Sirex") this _____ day of June, 1991 hereby assigns to Federal Computer Corporation ("FCC") that certain Consent Order judgment rendered in the case of SIREX U.S.A. INC. v. AIDANT, INC., ET AL., At Law No. 93228, entered on the 3rd day of May, 1991 in the Circuit Court of Fairfax County, Virginia, against Allen Izadpanah. A copy of the referenced judgment is attached hereto as Attachment #1. This assignment conveys to FCC any and all rights to said judgment, including, but not limited to, any and all sums of money or other benefit or advantage which may be had or obtained by reason of said judgment.

Sirex represents and warrants that this is a valid judgment, and that no money or other thing of value has been collected which would reduce or in any way diminish

the value of said judgment. Sirex further warrants that no appeal has been taken to said judgment, that the period for appeal has now expired, and Sirex acknowledges that FCC is relying on these representations in purchasing the judgment.

SIREX U.S.A., INC.

signature

BY:

NOTARY PUBLIC:

In and for the County of Queens, State of New York,

I hereby acknowledge that the individual whose name appears above, being known to me, did personally execute this document in my presence on this 29 day of June, 1991.

signature

Notary Public

My Commission expires August 31, 1991.

POWER OF ATTORNEY

I, Eddie Chu, authorized agent for Sirex USA, Inc. ("Assignor"), a New York Corporation, hereby constitute, make and appoint Federal Computer Corporation ("Assignee"), who has been assigned our judgment in Sirex U.S.A., Inc. v. Aidant, Inc., et.al., At Law No. 93228, Fairfax County Circuit Court, Virginia, our true and lawful attorney in fact, for us, on our behalf, and in our name, place and stead to enforce said judgment, and to take those steps necessary, including receiving payments, execution of legal documents, transferring property, endorsing checks with regard to said judgment, as it deems necessary to collect said judgment.

1. Assignor grants to said Assignee full power and authority to perform all acts to be done in and about the enforcement of the judgment herein described, as Assignor could do.

2. Assignor authorizes said Assignee to act in its behalf, demand, collect, and endorse all checks and other legal instruments with regard to the aforementioned judgment.

3. All rights, powers, and authority of said Assignee to exercise any and all of the rights and powers herein granted shall commence and be in full force and effect as of the date of our signatures, and may not be revoked.

SIREX USA, INC.

signature
Eddie Chu
Authorized Agent

STATE OF New York

COUNTY OF Queens, to-wit,

Subscribed and sworn to before me, a Notary Public, this 19 day of July, 1991.

signature
NOTARY PUBLIC

My Commission Expires: August 31, 1991

VIRGINIA
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC.
Plaintiffs,
v. At Law No. 93228

AIDANT, INC. et al,
Defendants.

AFFIDAVIT OF TRUSTEE
WALTER T. CHARLTON

1. My name is Walter T. Charlton.

My office addresses are 1710 Rhode Island Avenue, LL, Washington, D.C. 20036 and I maintain an office at 2009 N. 14th Street, Suite 410, Arlington, Virginia 22201. My office telephone number is 703-525-8387. I am a member of the bar of the District of Columbia, #186940.

2. I am co-counsel admitted pro hac vice in Case Law No. 91017, in the Circuit Court of Fairfax County, Virginia. I represent Allen A. Izadpanah from time to time in other matters. I actively participated in the trial and appeal of that case. Case No. 91017 was reversed by the Virginia Supreme Court and now awaits

new trial in the Circuit Court for Fairfax County, Virginia. I am also the Trustee of certain shares of stock in the corporation Aidant, Inc.

3. I was asked by Mr. Izadpanah to act to determine the amount due by Aidant, Inc. at this time and the debt owed by Mr. Izadpanah as guarantor of the debt to Sirex USA, Inc. Collection activities including garnishments against Mr. Izadpanah are ongoing at this time in this case (Law #93228). To this end I inquired several times, even on the record of this case, of Mr. Gross, who is purportedly the collection attorney for Sirex, as to amounts due. I received only evasive answers. I informed Mr. Izadpanah that the answers were evasive and I was getting nowhere. I informed Mr. Andrews who works for Mr. Izadpanah of my lack of progress.

4. I was shocked and surprised to learn that the Sirex USA, Inc. debt was totally

paid off in December 1990 (See Affidavit of Richard G. Andrews and Attachment #1 thereto). After reviewing Attachment #1 in order to verify the "paid in full" status indicated by Attachment #1, I called Sirex USA, Inc. in New York myself and verified the information furnished to me by Richard Andrews which contained in Attachment #1 to the Affidavit. After initially verifying that information during which conversation it was stated that "no attorney had ever been hired to collect the Aidant debt", I then requested the name and telephone number of Sirex USA, Inc.'s General Counsel. I was given the name and telephone number (212-425-9375) of William Shayne, Esquire, General Counsel for Sirex USA, Inc.

5. I called William Shayne, Esq. and informed him of the ongoing collection activities in the name of Sirex USA, Inc. against Mr. Izadpanah in the Circuit Court

for Fairfax County and the contradictory fact that the underlying debt appeared to be fully paid off. I also FAXed to Mr. Shayne a copy of the November 20, 1991 statement received by Mr. Andrews from Sirex (Andrews Attachment #1). Mr. Shayne stated he had no knowledge of the collection activities or lawsuits filed in the name of Sirex USA, Inc.

6. Mr. Shayne then requested that I again call Sirex USA, Inc. and speak to its owner and President Mr. Chu directly.

7. I did call Mr. Chu who identified himself as owner and President of Sirex USA, Inc.

8. Mr. Chu told me that:

(1) He never heard of Edward Gross, Esquire, who claims to represent Sirex, USA, Inc. in collection actions before the Circuit Court of Fairfax County, Virginia.

(2) He stated words to the effect that he recalled the Aidant, Inc. debt and

that the debt was marked fully paid but that certain collection expenses were deducted from the payments resulting in a less than full dollar collection of the underlying debt.

(3) He was aware of no lawsuits filed in the case.

9. I also spoke to the person in charge of customer account receivable collections at Sirex USA, Inc., Ms. Ku. Ms. Ku informed me that she remembered well that Aidant, Inc. case since it was the first case handled for Sirex USA, Inc. by her upon her being employed by Sirex USA, Inc.

She also stated that no lawsuit was filed in that case (on behalf of Sirex USA, Inc.) and that the case was settled in full by the collection agency.

I brought to her attention that the settlement date was December 1990. She stated words to the effect that that date was in accord with her recollection. Ms.

Ku stated that the collection agency used in the Aidant, Inc. collection matter was no longer employed by Sirex USA, Inc. She further stated that the specific debt of Aidant, Inc. was in a "paid off" status and that the authority of the collection agency to act for Sirex USA, Inc. on that case was also terminated when the collection agency was fired.

10. I next made several calls to Milliken & Michaels, Inc. the collection agency.

I spoke to a person there named Karen who informed me that Edward Gross, Esquire had originally been hired by Milliken & Michaels (Milliken), that it was his responsibility under Milliken's procedures to release any judgments obtained by him and that further, Milliken no longer was employed by Sirex USA, Inc.

I was also informed by Karen that the pay-off of the Sirex USA, Inc. debt was

handled by Edward Gross, Esquire. I requested of an attorney at Milliken (Mr. UnKauf) copies of pay-off documents but I have not received copies of the documents representing that pay-off.

Further affiant sayeth not.

signed
Walter T. Charlton

Subscribed and sworn to before me this 29th day of September, 1992.

Mary E. Deitz /s/
Notary Public

My Commission expires March 31, 1996.

VIRGINIA
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC.,
Plaintiffs,
v. At Law No. 93228

AIDANT, INC. et al,
Defendants.

AFFIDAVIT OF RICHARD ANDREWS

After first being duly sworn I do hereby state as follows:

1. My name is Richard G. Andrews.

I live at 8013 Tyson Oaks Circle, Vienna, Virginia 22182. My office telephone number is 301-590-0000.

2. I am employed at Compuland Technology, Inc. in Rockville, Maryland.

Mr. Allen A. Izadpanah is the President of that corporation and my superior.

3. Part of my duties are accounting matters for Compuland Technology, Inc. and part of my duties are to manage the bills in this country owed by my superior at Compuland, Allen Izadpanah.

4. Incident to my Compuland duties I had dealt in the past with Sirex USA, Inc., a New York based corporation that is one of Compuland's hardware vendors.

5. I was directed by Mr. Izadpanah to determine how much Aidant, Inc. and/or Mr. Izadpanah owed to Sirex USA, Inc. on a debt of Aidant, Inc., and the extent of the open balance guaranteed by Mr. izadpanah.

6. To that end I telephoned accounts receivable at Sirex USA, Inc., spoke with a clerk named Felisha and requested that she furnish the balance due on the account. She looked in the files and found no account whatsoever, paid or unpaid.

7. I called Felisha back and explained it is an old account. She said she only has files readily available that go back about a year. She would have to check with her supervisor for an old account.

8. I called her back a third time and she stated she had located the account but

that it was paid in full. At my request she FAXed a copy of a document in Sirex USA, Inc.'s regular business files indicating that the debt was paid in full in December 1990. The original of that FAX is attached as Attachment #1 to this Affidavit.

10. Upon receiving this information I called Walter T. Charlton, Esquire, who is one of Mr. Izadpanah's attorneys and gave him the information I had received and a copy of Attachment #1.

Further, affiant sayeth not.

signed
Richard G. Andrews

Subscribed and sworn to before me this 29th day of September, 1992.

Mary E. Deitz
Notary Public
My Commission expires March 31, 1996.

FROM:SIREX USA INC TO: 3014242057

SEP 17, 1992 11:40AM P.02

Milliken & Michaels, Inc.
802 Silverlake Blvd.
Dover, Delaware 19901

Attachment #1

Customer Service
Toll Free-National
1-800-788-1007

Mailing Address
802 Silverlake Blvd.
Dover, Delaware 19901
(302) 735-4891

November 30, 1991

Sirex U.S.A., Inc.
132-14 11 Ave.
College Point NY 11357
Attn: Irene Ku

Client Rep: Michael Douglas
Client Number: 22988
Last Placement: 03/14/91

Dear: Irene Ku

This is a status on all your accounts placed with us through November 30, 1991. Payment codes have been accounted for on your previous statements. Those payments for this month will be accounted for by a statement we will send to you by December 20, 1991.

[Line 1]

Debtor Name	---- Referred ---- Date	Amount
[Line 2]		
Present Balance	--------Status--------- Cd Description	Date
Advantage Business	1/23/91	11,405.92
11,405.92	FN Closed-No Asset	6/91
Aidant Inc.	**4/14/89**	**40,269.65**
.00	**2 Paid In Full**	**12/90**
[emphasis added]		
Associate Arts	2/26/91	1,216.00
1,216.00	GN Closed-Bal.Sm.	8/91
Boris	1/23/91	5,215.29
5,215.29	4 Legal-Closed	7/91
Metro Mantech	1/23/91	8,742.37
7,542.37	FN Closed-No Asset	11/91
Outer Island Consult	2/26/91	1,906.00
.00	LF Paid In Full	3/91
Totals --- >		68,755.23
25,379.58		

If I can be of further assistance, please call.

Very truly yours,

Michael Douglas
Milliken & Michaels, Cover

VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNT

SIREX U.S.A., INC.
Plaintiffs,
v. At Law No. 93228

AIDANT, INC. et al.
Defendants.

AFFIDAVIT OF SERVICE

STATE OF District of Columbia)
COUNTY OF Washington) to wit:

I, Melvin M. Shapiro, having been duly authorized to make service of the:

Notice

Motion to Turnover Property

in the above entitled case, hereby depose and say:

That my age is 49 years old, and my date of birth is September 6, 1941.

That my residential address is 13922 Lord Fairfax Place, Upper Marlboro, Maryland 20772.

That I am not a party to or otherwise interested in this suit.

That at 3:45 o'clock pm on the 27th day of June, 1991, I served the within named

defendant Allen Izadpanah by leaving a copy of the above documents at his usual place of employment at 6230 Oxon Hill Road, Maryland with Pattie Wilson, who stated that she was authorized to accept on behalf of Allen Izadpanah.

Sex: female Height: 5'6" Weight: 150
Age: 36 Hair: blonde Color: white

/s/
Melvin M. Shapiro
Special Process Server

SUBSCRIBED AND SWORN to before me this 2nd day of July, 1991

Barbara Gillman
Notary Public

My Commission expires: 10/31/95

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC.
Plaintiffs

v. At Law No. 93228

AIDANT, INC. et al.
Defendants

AFFIDAVIT OF PATTI WILSON

After first being duly sworn I do hereby state as follows:

1. My name is Patti Wilson and I am employed at 6230 Oxon Hill Road, Oxon Hill, Maryland.

2. The telephone number at the foregoing address is (301) 567-5200.

3. Mr. Allen Izadpanah had his place of business at this address during the early part of 1991.

4. I have never been authorized to accept any papers on behalf of Allen Izadpanah or Aidant, Inc.

5. I never told anyone that I was authorized to receive papers on Mr. Izadpanah's or Aidant, Inc.'s behalf.

6. Further, Affiant sayeth not.

/s
Patti Wilson

Subscribed and sworn to before me this 29 day of October, 1991.

Suzanne B. Foulner
Notary Public, Maryland

My Commission Expires: May 16, 1995

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC.,
Plaintiffs,
v. At Law No. 93228

AIDANT, INC. et al,
Defendants.

DEFENDANTS' EXCEPTIONS TO MARCH 30, 1993 ORDER

The granting of sanctions against Defendants' counsel on behalf of two separate counsel for Federal Computer Corporation, the adverse party in a related fraud case is erroneous because:

1. The obtaining of subpoenas was authorized by the law. Virginia Code §8.01-506.1.
2. The background information and investigation warranted the obtaining of the subpoenas.
3. Information revealed as a direct result of obtaining the subpoenas confirmed the facts indicating that the debt was not owed to

Plaintiffs, that it had been paid in full, and that the real parties in interest, Defendants in a related case, had violated their fiduciary duties by proceeding to attach stock owned by Defendant in this case.

4. The subpoenas were ignored by Plaintiff's counsel, Kurz, and never honored, therefore, there was no prejudice from the issuance of the subpoenas.

5. The facts subsequently admitted by Plaintiffs, which were elicited by the process resulting from the subpoenas, confirm that Plaintiffs committed:

   A. A series of frauds on the Court in the purported collection process;

   B. A fraud on Defendants by evading the fiduciary duties

owed Defendants;

C. A stock fraud--by the sale of stock to itself.

6. The acts taken by Defendant's attorneys were in good faith and not only justified by the facts, but also required by their obligations to their client.

7. The acts of attorneys for the parties seeking sanctions, revealed due to Defendant's obtaining of the subpoenas, were a violation of a Mandate of the Virginia Supreme Court in a related case.

8. The Judge abused his discretion in quashing the subpoenas.

9. The Judge abused his discretion in granting sanctions.

10. The sanctions, even if warranted (which they were not), were extreme and excessive. The

chilling effect is also extreme and excessive. The amount of $17,500 in sanctions for quashing subpoenas to two persons is extreme and excessive.

11. The sanctions granted include attorneys' fees and costs incurred in seeking the sanctions, run up by the parties seeking sanctions in an effort to evade compliance with the subpoenas authorized by Section 8.01-506.1.

12. The entire pattern of acts in this case, including thefts in related cases, demonstrates a fraud on the Court and on Defendants, and an intent to evade a Mandate of the Supreme Court of Virginia.

Allen A. Izadpanah
AIDANT, INC.

By Counsel
Raymond B.
Benzinger, pro se.

/s/
Raymond B. Benzinger
2009 N. 14th Street
Suite 410
Arlington, VA 22201
703-525-1362

/s/
Walter T. Charlton (pro se.)
2009 N. 14th Street
Suite 410
Arlington, Virginia 22201

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Defendants' Exceptions to March 30, 1993 Order was mailed, first class, postage prepaid on this 20th day of April, 1993, to: James S. Kurz, Esq., HAZEL & THOMAS, 3110 Fairview Park Drive, Suite 1400, P.O. Box 12001, Falls Church, VA 22042; and Edward Gross, Esq., Suite 330, 3975 University Drive, Fairfax, Virginia 22030.

/s/

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC.,
Plaintiffs,

v. At Law No. 93228

AIDANT, INC. et al,
Defendants.

EXCEPTIONS TO COMMISSIONER'S REPORT

COMES NOW Defendant Allen A. Izadpanah, through counsel and files these exceptions to the Commissioner's Order of September 22, 1992, as follows:

1. This proceeding was and is an attempt by a third party creditor (Sirex USA, Inc.) to divest "ownership" of certain stock certificates of Aidant, Inc. which are now registered on the books of said Aidant, Inc. in the name of other persons. Those persons are: Allen Izadpanah, Walter T. Charlton, Trustee, and Abdol Izadpanah.

2. Plaintiffs assert that the divestiture is pursuant to the

validity of a turn-over order dated August 29, 1991, obtained in an *ex-parte* proceeding at which the validity of service and hence the jurisdiction of the court to act has been and continues to be challenged by Defendant Allen A. Izadpanah.

3. Further, Plaintiff who asserts a valid attachment of all shares of stock of Aidant, Inc. have never even attempted to establish whether or not some or all of the stock sought to be divested was, is now, and was before August 29, 1991 owned (or otherwise controlled) by persons other than the Defendant Allen A. Izadpanah.

4. Counsel for Defendant Izadpanah assert that, in fact, Allen A. Izadpanah was never at any time since August 28, 1991 (one day before the disputed Order) the owner in control of any part of the shares of stock

sought to be divested.

5. In fact, at all times since August 28, 1991, all of the shares owned by Allen A. Izadpanah were pledged to his attorneys Walter T. Charlton and Raymond B. Benzinger as security for attorneys' fees and attorneys' liens duly perfected through notice to opposing attorneys. In addition to the stock pledged on October 25, 1991, all of the additional authorized stock of Aidant, Inc. was issued to Mr. Allen Izadpanah and immediately transferred to the custody and control of a Trustee for the creditors of Aidant, Inc. The latter transaction was accomplished with the consent of all persons having an interest in those shares, i.e., Raymond B. Benzinger, Walter T. Charlton and Allen and Abdol Izadpanah and the Board of Directors of Aidant,

Inc. That pledged stock represented all of the authorized shares of Aidant, Inc., Class A and B, all of that stock was transferred into the ownership and control of Walter T. Charlton, Trustee for Benzinger, Charlton and "the other bona-fide creditors of Aidant, Inc. as their interests may appear". Thereafter, on January 18, 1992, a part of the stock held by the Trustee was sold for value to Abdol Izadpanah. That stock was subject to a written agreement of said Abdol Izadpanah to pay out of any monies received all of the debts owed to the "bona-fide creditors of Aidant, Inc." as a matter of priority .

6. It is also obvious as a matter of well recognized Virginia Law Jetco, Inc. v. Bank of Virginia, et al., 165 S.E. 2d 276, 209 VA. 482 (1969) that any divestiture order is ineffective

as to persons who are not and have never been parties to the lawsuits which purportedly accomplished the divestiture--even assuming arguendo that the turn-over order signed on August 29, 1991 is not VOID as claimed by Izadpanah. To do so would violate basic principles of ownership of personal property pursuant to the law of Virginia and violates due process requirements of the United States Constitution prohibiting extra-territorial acts by the states. Shaffer v. Heitner, 433 U.S. 186 (1977).

7. It follows that no action of the court in this case can affect the ownership or control of Aidant, Inc. stock held pursuant to any valid alienation by Allen A. Izadpanah of his stock which occurred prior to August 29, 1991. Most of the

ownership interests described herein did occur prior to that date.

8. On September 22, 1992 in a letter opinion, Judge Bach ruled in At Law No. 113154 that the attorneys' liens asserted by counsel pursuant to an employment contract entered into in December 1989, had priority over the third party creditor claim asserted by Sirex USA, Inc. An order has been prepared by counsel and has been submitted for entry in that cause (Law No. 113154).

9. The implications of that letter opinion included inter alia that the liens and underlying debt asserted by Izadpanah's attorneys are valid. It follows that a pledge of his stock pursuant to that lien and debt divested Izadpanah of any ability to transfer "ownership" in Aidant, Inc. stock after the date the stock was

pledged except subject to the liens secured thereby. Quite obviously the pledge of the stock to secure attorneys' fees (in July 1991) was before the illicit actions of Charles Crowe in reissuing the stock during September 1991, at a time when the corporate existence had been terminated by The Virginia Corporation Commission.

10. Defendant herein hereby alleges that this entire proceeding, from its inception, has been improper.

Conclusion:

Defendant Izadpanah files these exceptions to the Commissioner's report with a request for a hearing which is expected to take approximately one hour and should be heard by the Honorable Judge F. Bruce Bach.

Allen Izadpanah
By Counsel

signed
Raymond B. Benzinger
2009 N. 14th Street
Suite 410
Arlington, VA 22201
703-525-1362

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Exceptions to Commissioner's Report was mailed, first class, postage prepaid on this 2nd day of October, 1992, to Edward Gross, Esq., Suite 330, 3975 University Drive, Fairfax, Virginia 22030.

signature

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC.
Plaintiffs,
v. At Law No. 93228

AIDANT, INC. et al.
Defendants.

EXCEPTIONS TO FINAL ORDER

COME NOW Aidant, Inc. and Allen A. Izadpanah, through counsel, and files these exceptions to the final Order entered on Friday, November 1, 1991.

The exceptions are:

1. The Court erred in failing to vacate the August 29, 1991 Order for the Court's lack of jurisdiction over the Res (the stock) attached:

A. Mr. Izadpanah was, at the time the levy was sought, a domiciliary and resident of Maryland.

B. Further, the Virginia Court does not have the power to attach property located in Maryland. To do so violates Constitutional Due Process. (See Shaffer v.

Heitner, 97 S.Ct. 2569 (1977).

C. The actual stock certificate(s) was not before the Court as required by Virginia Code § 8.8-317 and §§ 8.8-101, et seq.

2. The Court erred in failing to vacate the August 29, 1991 Order by reason of the lack of jurisdiction over the person of the debtor. The debtor Izadpanah was never served with notice of the attachment in accordance with the requirements of the law of Virginia.

3. The Court erred when it failed to recognize the fact that Charles Crowe, the person purportedly re-issuing the stock certificate(s) of Aidant, Inc. had no authority to do so because he had been removed as a corporate officer on April 17, 1989.

4. The Court erred when it ignored the fact that, as of the date the stock was purportedly re-issued by Charles Crowe, the

Corporation's Charter had expires and no corporate officer could act for the corporation to re-issue stock in any legally binding way at that time.

5. The Court erred when it failed to find that there was never notice to counsel of the presentation of the Order of August 29, 1991, attempting the levy on the stock. This failure to notice counsel or obtain counsel's signature on the Order is an abuse of discretion prohibited in Virginia Rule 1:13.

6. The Court erred when it failed to address the unreasonableness of the sale which was not conducted in accordance with the "notice", was essentially private, offering the stock in secret without any public notice or advertising, selling the stock before the time set in the notice, and selling for an unreasonably low price.

AIDANT, INC.
Allen A. Izadpanah

Through Counsel

Raymond B. Benzinger
Raymond B. Benzinger
2009 N. 14th Street
Suite 410
Arlington, VA 22201
703-525-1362

EXTRACT OF HEARING TESTIMONY
Before Thomas A. Fortkort, 3/13/90

******

Motion to compel the production of documents of Mr. Izadpanah is granted.

All parties will produce their relevant income tax returns for their income taxes for the period covered, which would, I assume, be '87, '86.

MR. THACHER: May I have a point of clarification, Your Honor?

The Court has granted the motion that Aidant, Incorporated, not spend any money.

THE COURT: Yes, sir.

MR. THACHER: Does that mean any money at all?

THE COURT: Yes, sir.

MR. THACHER: Okay.

THE COURT: Not without leave of Court.

MR. THACHER: Without leave. May I have a clarification as to day-to-day business activities? What we're really doing is crippling the corporation if they

can't --

THE COURT: Everybody in this case on your side has represented to me that that was dead corporation, barely existed, only in paper.

MR. THACHER: Yes, sir.

THE COURT: And now there's something there? I want to know about it.

MR. THACHER: That will be fine, sir. In other words, without leave of Court. So, anything has got to come before the Court before it can be spent.

THE COURT: Yes.

MR. THACHER: That will be fine, sir.

THE COURT: More particularly, with Mr. Murphy.

MR. THACHER: Yes, sir. That will be fine. (Thereupon, at 9:52 o'clock, .m., the hearing in the above-entitled matter was concluded.)

****

RON JOHNSON REPORTERS

Court testimony of Charles Crowe
Reported On Monday, September 13, 1992

Examination by Mr. Benzinger:

Q Where did those funds go, Mr. Crowe?

A The $27,000?

Q Yes, sir.

A The $27,000, as I recall, was placed into an escrow account managed by Mr. Thacher's law firm.

Q Did you ever request Mr. Thacher to pay the Syrex judgment on behalf of Aidant out of that escrow account?

A No. The moneys held in that account I think were paid -- some of it was paid to Federal Computer, and some of the moneys I think went to Mr. Thacher's charges for bills, invoices to Aidant for its defense at the time.

Q Mr. Thacher was representing Aidant?

A In some instances, but principally he was representing me, and I had paid him personally for much of that.

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC. April 1, 1994
Plaintiff,
v. At Law No. 93228
AIDANT, INC., et al.
Defendants

ORDER

THIS CAUSE came before this Court on the 4th day of February 1994 based upon Plaintiff's Motion to order Payment of Bond; and after argument by Counsel for all parties;

IT APPEARING TO THIS COURT that Aetna Casualty and Surety Company posted a Supersedeas Bond on behalf of Defendant Raymond Benzinger on June 14, 1993 in the amount of $20,000.00; and it further

APPEARING TO THIS COURT that the Motion to order Payment of Bond should be denied at this time in accordance with the letter opinion dated March 14, 1994; and it further

APPEARING TO THIS COURT that a new Supersedeas Bond ought to be posted in the

amount of Thirty Thousand Dollars ($30,000.00); it is therefore

ORDERED that a substitute Supersedeas Bond shall be posted by Defendant Benzinger in the amount of Thirty Thousand Dollars ($30,000.00) for the purposes of appeal to the United States Supreme Court of the Order entered in Fairfax Circuit Court Case Number L93228 on March 30, 1993 for which an appeal was denied by the Virginia Supreme Court in Record Number 930910 on November 23, 1993; and it is further

ORDERED that said Bond shall be posted in a form and by surety acceptable to this Court within 21 days of entry of this Order; and it is further

ORDERED that the Supersedeas Bond dated June 14, 1993 now posted shall remain in full force and effect until said new Supersedeas Bond shall be properly posted in this matter; and it is further

ORDERED that before the June 14, 1993

Supersedeas Bond is substituted, a copy of the new Supersedeas Bond shall be delivered to Edward Gross, who shall have 10 days from date of delivery to file an objection to the form or surety of the new Supersedeas Bond; if an objection is filed, then the June 14, 1993 Supersedeas Bond, shall remain in full force and effect until such objection is resolved; and it is further

ORDERED that plaintiff may execute on or receive payment under the June 14, 1993 Supersedeas Bond if a substitute bond is not posted in accordance with this Order.

Entered this 1st day of April 1994.

/s/
JUDGE JANE MARUM ROUSH

I ASK FOR THIS:

/ s/
Edward Gross
Jeffrey S. Romanick
Counsel for Plaintiff

SEEN AND Objected to because Sirex is not a party to this action.

/s/
Raymond Battocchi, Counsel for Defendants

Supreme Court, U.S.
FILED
JUN 2 1994

No. 93-1870

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

RAYMOND B. BENZINGER,
AIDANT, INC.,
ALLEN A. IZADPANAH, and
WALTER T. CHARLTON,

Petitioners,

v.

SIREX, USA, INC., et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR FAIRFAX COUNTY, VIRGINIA

BRIEF FOR RESPONDENT

EDWARD GROSS
Counsel of Record
3975 University Drive
Suite 410
Fairfax, Virginia 220303
(703) 273-1400

Counsel for Respondent Sirex, USA, Inc.

45 pp

No. 93-1870

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1993

RAYMOND B. BENZINGER,
AIDANT, INC.,
ALLEN A. IZADPANAH, and
WALTER T. CHARLTON,

Petitioners,

v.

SIREX, USA, INC., et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR FAIRFAX COUNTY, VIRGINIA

BRIEF FOR RESPONDENT

EDWARD GROSS
Counsel of Record
3975 University Drive
Suite 410
Fairfax, Virginia 220303
(703) 273-1400

Counsel for Respondent Sirex, USA, Inc.

QUESTION PRESENTED

Does a trial court have discretion to award monetary sanctions against an attorney who files subpoenas for an improper purpose in violation of Code of Virginia 8.01-271.1, and Virginia Supreme Court Rule of Civil Procedure 1.4?

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STATUTES

VIRGINIA CODE

Article 2

Pleadings Generally

§8.01-271.1. Signing of pleadings, motions, and other papers; oral motions; sanctions. - Every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, and the attorney's address shall be stated on the first pleading filed by that attorney in the action. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address.

The signature of an attorney or party constitutes a certificate by him that (i) he had read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper

purposes, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, written motion, or other paper is not signed, it shall be stricken unless it is signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

An oral motion made by an attorney or party in any court of the Commonwealth constitutes a representation by him that (i) to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an

appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee. (1987, cc. 259, 682)

STATEMENT OF THE CASE

A. INTRODUCTION

The only issue properly appealed to this Court is the sanctioning of Petitioner's attorney Raymond Benzinger (hereafter "Benzinger"). Fairfax County Circuit Court Judge Bruce Bach sanctioned Benzinger after concluding that he violated Va. Code 8.01-271.1 Ann. (1985) by issuing subpoenas to Appellees for an improper purpose.

Rather than address this issue head-on, Petitioners would like this Court to review the entire underlying case, overturn Orders which have been final for years, and thereafter vacate Benzinger's sanctions. To disguise improper collateral attacks on final Orders, Appellants present a selective, incomplete case history. However, none of these underlying judgements are here for review.

B. HISTORY OF THE CASE

On May 3, 1991 Raymond Benzinger signed a Consent Order agreeing that a judgment should be entered against his client Allen Izadpanah (hereafter "Izadpanah") in favor of

Sirex U.S.A., Inc. (hereafter "Sirex") in the amount of $ 21,997.05. This Consent Order was never appealed, and is final. (The final 1991 Consent Order is attached to the Petition For Writ Of Certiorari at pp. a10-a11, and will be referred to herein as "the Sirex judgement"). Over the next several months attempts to collect on the Sirex judgement were unsuccessful. Collection related queries directed to Benzinger led to his hasty, albeit temporary, withdrawal from this case.

Thereafter, collection efforts stalled because Izadpanah fled his creditors in the Commonwealth of Virginia, leaving the Country for Riyadh, Saudi Arabia.

In July, 1991 Federal Computer Corporation ("FCC") offered to purchase the Sirex judgement, hoping a money judgement against Izadpanah could be helpful in fending off his continuing stream of litigation. [1]

---

[1] From 1989 to the present Izadpanah has repeatedly sued FCC, and/or its founder and president Robert Hummel. Izadpanah has never prevailed on a single substantive issue, and all of his cases have now been dismissed. In fact, the Fairfax Circuit finally issued an order that no new lawsuits

On July 29, 1991, pursuant to Virginia law, FCC purchased the Sirex judgement through an "Assignment of Judgement" accompanied by a "Power of Attorney" from Sirex, authorizing FCC and attorney Edward Gross to lawfully pursue collection of the judgement. (These purchase documents are part of the record in this case, and are attached to the Petition For Writ Of Certiorari at pp. e13-e16).

However, the elusive Izadpanah proved to be "collection proof." He was "persuaded" to appear for court ordered Debtor's Interrogatories only after a Capias Warrant was issued for his arrest (Appendix, a3). Although Izadpanah frequently travels abroad, he testified under oath that:

1. His employer pays him no salary;

2. His tailored clothes, travel expenses, and living accommodations are paid directly by his employer, so he doesn't need money for these things;

---

could be filed without leave of court.

3. Gucci loafers and other items are 'given' to him by Saudi street vendors, because "if you need anything in Saudi Arabia, they just give it to you;" and

4. The only money he has in the world is the ninety-nine cents he carried to the Debtor's Interrogatory hearing in his pocket.

Izadpanah's one admitted asset was capital stock of Aidant, Inc., a closely held, private Virginia corporation which he, FCC, Charles Crowe, and another investor jointly owned. In accordance with Virginia law, Judge Bruce Bach of the Fairfax County Circuit Court ordered Izadpanah's stock sold, and the proceeds applied to his debt. (The August 31, 1991 Order directing this stock sale is attached to the Petition for Writ of Certiorari at pp. a8-a9, and will be referred to hereafter as "the Stock Turnover Order"). This Stock Turnover Order was never appealed and is final. In accordance with the Stock Turnover Order, Izadpanah's stock in Aidant, Inc. was sold after notice of the sale was given to all interested parties, including Izadpanah. The stock was

purchased by the only interested buyers -- the co-owners of this closely held, private corporation. The stock was returned to the corporate treasury for cancellation.

Izadpanah made no offer for the stock, and made no effort to pay his indebtedness on the underlying judgement. Instead, his attorneys awaited the outcome of the stock sale, then sought to collaterally attack the Stock Turnover Order, and the sale of the stock. The same unsupported arguments which appear in the present Petition for Writ of Certiorari were presented to the trial court at a 1991 hearing on Appellant's Motion To Vacate the Stock Turnover Order. This matter was fully litigated in 1991, and the Fairfax County Circuit Court rejected challenges to: 1) jurisdiction of the court, 2) the validity of the Stock Turnover Order and the Sirex judgement, 3) the adequacy of service of process and notice given to Izadpanah of the stock sale, 4) the method, manner, timing and outcome of the stock sale, and 5) denial of the right to "due process." After hearing all their

"evidence," Judge Bach rejected Appellant's challenges, and stated in his November 1, 1991 Final Order:

> " . . . after hearing argument by both Counsel for Defendant and Counsel for Plaintiff, this Court determines that the Order to Turnover Property entered on August 29, 1991 by this Court was proper; and that the sale of the Aidant, Inc. stock by Edward Gross on October 4, 1991 was proper and valid; therefore it is
>
> ORDERED that the Motion to Vacate described above is denied."
>
> (Appendix, a1)

Izadpanah and his attorneys do not even mention this November 1, 1991 Final Order in their Petition to this Court. This Final Order is critical to the disposition of this case, because Izadpanah appealed that Order to the Virginia Supreme Court in 1991, and his Petition For Appeal was denied in early 1992. If he wished to appeal any of those issues to this Court, including the due process challenges he now forwards, he was required by this Court's rules of procedure to pursue these matters in 1992. Having failed to do so, he now attempts to "bootstrap" challenges to these final orders through his attack on the sanctions Order. The stock

transfer matters have been litigated fully, and should be final for all purposes. The complete omission on any reference to this November 1991 Final Order from Izadpanah's Petition is a material, misleading omission, which presents an incomplete, inaccurate depiction of the case below, and provides yet another example of the sort of abuse of process for which sanctions have been issued.

C. SANCTIONED CONDUCT

In disregard of the principle of finality of judgements, Benzinger and Charlton attempted in late 1992 to reopen litigation by challenging the Stock Turnover Order and the Final Order. During post-judgement collection proceedings they served subpoenas duces tecum upon: 1) Izadpanah's judgement creditor, 2) the creditor's attorney (seeking privileged and confidential documents), and 3) individuals and entities not party to the case.

The manner, timing and scope of this discovery was highly questionable. The subpoenas were served on a Friday, demanding return and extensive document production the next

business day (which was a Tuesday because the intervening Monday was a holiday, and the Court was closed).

The procedure invoked was improper under the Virginia Supreme Court Rules of Procedure, (which provide 21 days to respond to any request for documents). See, e.g., Virginia Supreme Court Rules 4.5(b)(5) and 4.9. Even a cursory review of the documents requested reveals the over-broad, burdensome nature of this discovery.

Upon receipt of these subpoenas, Respondents' counsel immediately contacted Benzinger and requested a short extension in the return date. Benzinger summarily refused this request, demanded immediate compliance, and threatened to invoke the Court's contempt power against those not appearing and producing materials on the prescribed day (Appendix, a7).

Commissioner Charles Dunn, whose name Benzinger attached to the subpoenas, was more than a little surprised, and refused to issue the subpoenas, stating in relevant part:

> " I suppose the Clerk may issue the subpoenas but please note that I did not reserve a time on

> my calendar for [the hearing noticed by the debtor]. . . . I would also provide enough time for the other side to be heard before a Circuit Court Judge since I think, at first, it is unusual or novel to issue a subpoena duces tecum for a judgement debtor to have documents produced at a Commissioner's hearing. . . .
>
> Hence, I decline to issue the subpoenas. . ."
>
> (Appendix, a5)

Undeterred by the Commissioner's letter, Benzinger demanded appearance and document production at the Office of the Fairfax County Circuit Court Clerk. At the emergency hearing necessitated by this conduct, Judge Lee ordered a stay of the subpoena return date to allow objections. Judge Lee stated:

> "The ruling of the Court is that the subpoenas which were issued to Mr. Edward Gross, directing him to appear before Judge Bach on October 16, will be quashed...
>
> At best the procedure is irregular, even looking at 8.01-506.1 of the Code."

Hearings on the propriety of the subpoenas covered portions of five separate days, including a full day on March 30, 1993. Judge Bach heard Benzinger's evidence and

argument attempting to justify his conduct over five days, then sanctioned Benzinger, stating:

> "And in my opinion it was done in a way to bring about maximum disruption to and trouble to the other side. . .
>
> [I]n addition to everything else, to me and at least as important as filing these subpoenas, was what was asked for, and the way it was asked, and the timing of it.
>
> It was as I said in the other hearing extreme hardball, and I think that is sanctionable. . ."

(Appendix, a12-a13).

SUMMARY OF ARGUMENT

In 1991 Izadpanah lost all of his stock in Aidant, Inc., and therefore had no standing to initiate his various stockholder's derivative actions.

In 1992 Izadpanah unsuccessfully appealed the seizure and sale of his stock to the Virginia Supreme Court. No further appeal was attempted, and therefore Izadpanah's loss of stock has been a final, decided matter since 1992.

Rather than accept the finality of this stock loss, Izadpanah and his attorneys have repeatedly attempted to reopen that matter, and somehow regain standing to file stockholder derivative suits. This unreasonable refusal to accept finality of judgments manifested itself in improper use of court process, and resulted in sanctions being imposed against attorney Benzinger.

Unable to directly contest the loss of stock, Petitioners have manufactured a massive conspiracy that includes opposing counsel, and even the Virginia judiciary. Petitioners argue that this conspiracy resulted in "fraudulent" judgments;

hence, their challenge to the stock seizure and sale should be deemed timely and heard by this Court.

There is no credible evidence to support any aspect of this far-fetched conspiracy theory. Petitioners' derivative actions were properly dismissed, because Izadpanah has no stock, and his attorneys were properly sanctioned for their unreasonable refusal to accept this fact.

ARGUMENT

A. INTRODUCTION

Despite their unsuccessful challenges and appeals over two years, Izadpanah's attorneys refuse to stop litigating decided matters. They are here attempting to overturn the Stock Turnover Order and the Final Order, and asking this Court to revisit the underlying Sirex judgement as well. However, these matters are final, Izadpanah's loss of stock has not, and could not properly be, designated as an assignment of error in this appeal; therefore, their entire line of argument is improper.

This appeal presents yet another futile attempt to re-litigate decided matters. This unreasonable pattern of refusal to accept the validity and finality of Court Orders manifested itself in improper conduct once too often, and resulted in sanctions being imposed.

B. THE COURT ISSUED SANCTIONS FOR IMPROPER CONDUCT

Judge Bach gave Petitioners' hearings over five days to defend their conduct and present evidence.

At the conclusion of these hearings, Judge Bach issued sanctions because of the manner in which Benzinger conducted himself. Petitioners argue to this Court that Benzinger had "reason to believe" he could issue the offending subpoenas. These arguments simply ignore the point of the sanctions; these attorneys were found to have used the Court's procedures for an improper purpose. That is Judge Bach's precise finding, and he left no room for post-hoc rationalizations. Judge Bach's precise holding states:

> "[I]n addition to everything else, to me and at least as important as filing these subpoenas, was what was asked for, and the way it was asked, and the timing of it."
>
> (Appendix, a12-13).

When attorney Benzinger refused Respondents' request for a short extension to object to his unprecedented and burdensome subpoenas, any question of propriety was resolved against him. Commissioner Dunn made perfectly clear to Benzinger that, at the very least, his "novel" request must be tempered with time for response. Benzinger refused.

He either knew or suspected that his subpoenas would be quashed, and therefore sought to maximize disruption to Respondents and their attorneys, using an improperly short return period to achieve these ends. As Judge Bach said:

> "[I]n my opinion it was done in a way to bring about maximum disruption to and trouble to the other side."
>
> (Appendix, a12-a13).

C. PETITIONERS' CONTRADICTORY EXCUSES CANNOT JUSTIFY THEIR CONDUCT

There can be no clearer example of filing a paper for an improper purpose than the acts of Benzinger in this case -- a post-judgement debtor attempting to harass and intimidate a creditor by initiating discovery over final matters. More egregious still was the manner in which this activity was conducted.

Petitioners attempted to justify their conduct in their Virginia Supreme Court Brief by alleging that attorney Charlton believed the underlying Sirex judgement had been

somehow "paid in full," despite the undisputed fact that his client has never paid a single penny toward the debt.

At trial below, however, Petitioners offered a quite different excuse for their conduct. Then, Petitioners vigorously argued that: the judgement creditor refused to provide an accounting of the judgment balance,and a debtor is always entitled to an accounting of the judgement balance upon demand; therefore, the debtor's counsel was justified in seeking records to determine the balance. (How this might justify an onslaught of subpoenas, a one business day return period, and contempt threats for failure to comply, was never explained).

Under cross-examination, however, an associate of Benzinger and Charlton's law firm, Mary Jolma, admitted that Sirex Counsel had been given a full written accounting of the judgement balance, and that she personally observed this written accounting in the firm's files (Appendix, a11). That cross-examination admission, and the written accounting of the judgement balance which was accepted as evidence in the

record, completely impeach the Petitioner's prior rationale for the sanctioned conduct.

Having been impeached by their own associate, Petitioners' now omit the 'accounting' argument, and instead blindly allege that somehow, without their debtor client ever volunteering a penny, the underlying judgement has been fully paid. In light of the undisputed facts, this unsupported claim that there is "reason to believe" Izadpanah's debt has been paid in full is utterly specious.

In fact, the Petitioners' evidence at trial below included an Affidavit by Sirex U.S.A.'s President Eddie Chu (Appendix, a9). Mr. Chu's Affidavit contradicts each of the essential propositions forwarded by the Petitioners. That Affidavit unequivocally states in relevant part that:

> " . . .
> 5. The balance of the [Sirex] judgement was subsequently assigned to Federal Computer Corporation for additional compensation on July 29, 1991. (The Affidavit then referenced the 'Assignment of Judgement' and 'Power of Attorney' to FCC, which had been made attachments to Mr. Chu's Affidavit).

> 6. At the time of the assignment less than the full judgement had been paid.
>
> 7. The original [Sirex] action was maintained by local council [sic] Ed Gross on behalf of Sirex. (Emphasis added).
>
> . . ."

Judge Bach heard all of the Petitioners' "evidence" and argument time and again over two years. He was never persuaded. This Court should not revisit these final, factual determinations.

D. SANCTIONS WERE REASONABLE IN NATURE AND AMOUNT

If Virginia Code Ann. §8.01-271.1 is to have any meaning, it is that a judge who finds improper conduct can act to control and redress that conduct. Judge Bach heard evidence over five separate days, and in the end he concluded that improper, "hardball" tactics had been employed for an improper purpose. He therefore quashed improper subpoenas, and issued monetary sanctions designed to redress the improper conduct. These monetary sanctions represented

some, but not all, of the costs of responding to the improper subpoenas, and seeking sanctions. As Judge Bach stated:

> "I think that this statute contemplates reasonable fees to bring this motion, and we have been here a number of days on it, and we are here again today, all day today in court, and I think that is a reasonable fee."
>
> (Appendix, a12).

Judge Bach's reasoning was:

> "[W]ho would ever bring a $250, or $300, or $1,000 sanction if the other side could cost their client ten times that amount, or five times that amount, or even that amount again in additional attorneys fees in order to bring it."
>
> (Appendix, a12).

It is important to recognize that the fees associated with seeking sanctions escalated because Petitioners repeatedly requested additional argument, ultimately encompassing five separate days worth of hearings, including the full day March 30, 1993 hearing. If excessive time was expended, it was expended at Petitioners' specific request, and the associated costs should be borne by them.

E. NO GROUNDS THAT WARRANT CERTIORARI

Rule 10 of the United States Supreme Court Rules sets out the general basis upon which this Court will grant Petitions for a Writ of Certiorari. The Petition filed in this matter presents no "special and important reasons" for this court to review the sanctions order imposed on Benzinger. There are no important Federal Questions to be resolved. Sanctions regarding abuse of Virginia Rules of Procedure pose no such issue. The "Federal Question" raised by the Petition involves "due process" claims over seizure of property which occurred in 1991, and was litigated through the Virginia Supreme Court, but was never appealed to this Court.

The Petition presents no arguments regarding a conflict between various United States Court of Appeals or conflicts between the decisions of State Courts of last resort.

If this Court chose to grant Certiorari in this case, it would essentially be determining whether an attorney could be sanctioned for improper conduct during his defense of a collection action.

F. UNPRINCIPLED CONDUCT OF BENZINGER AND CHARLTON

Benzinger and Charlton in their Petition again repeat untrue accusations against Edward Gross, who is a member in good standing of the Bar of the Commonwealth of Virginia, the State of Maryland and the District of Columbia, the Federal Courts in these jurisdictions, and this Court. Every judge that has heard these accusations has rejected them.

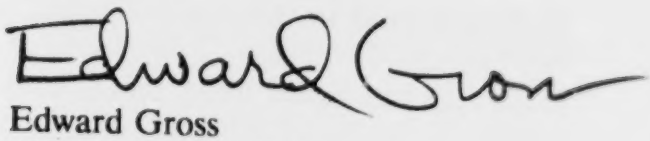
Now, in this Petition, the Petitioners expand their accusations to include the entire judicial system of the Commonwealth of Virginia. According to the Petition, the Virginia judiciary itself has participated in the perpetration of a "fraudulent collection action" against Petitioners and their client. If this Court chooses to hear this action, it will only encourage Benzinger and Charlton to continue their improper behavior.

CONCLUSION

If a judge is to have control of his case-load, courtroom, and docket, then he must have discretion to award sanctions for improper conduct. Judge Bach's sanctions were reasonable

and well reasoned, and should not be overturned. This Petition For Writ of Certiorari should be denied.

Respectfully Submitted,



Edward Gross
3975 University Drive
Suite 410
Fairfax, Virginia 22030
(703) 273-1400
Counsel for Respondent Sirex, USA, Inc.

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V I R G I N I A:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A., INC.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AT LAW NO: 93228
	)	
AIDANT, INC. et al.	)	
	)	
Defendants.	)	

FINAL ORDER

THIS MATTER came before this Court on October 18, 1991, based upon Defendant's Motion to Vacate the Order of August 29, 1991, to Set Aside as Void, the Purported Sale of Aidant, Inc. Stock Owned by Allen A. Izadpanah, and for Further Injunctive Relief Pending Determination of an Appeal Before the Supreme Court of Virginia; and after hearing argument by both counsel for Defendant and Counsel for Plaintiff, this Court determines that the Order to Turnover Property entered on August 29, 1992, by this Court was proper; and that the sale of the Aidant, Inc. stock by Edward Gross on October 4, 1991, was proper and valid; therefore it is

ORDERED that the Motion to Vacate described above is denied.

_____ _____
Date Judge, Fairfax Circuit Court

I ASK FOR THIS:

Edward Gross
Counsel for Plaintiff

SEEN AND OBJECTED:

Raymond B. Benzinger
Counsel for Defendant
Allen A. Izadpanah

V I R G I N I A:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

SIREX U.S.A, INC.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AT LAW NO: 93228
	)	
ALLEN IZADPANAH	)	
	)	
Defendant.	)	

C A P I A S

COMMONWEALTH OF VIRGINIA

County of Fairfax, to-wit:

TO: Wayne Huggins, Sheriff
Fairfax County, VA
4110 Chain Bridge Road
Fairfax, Virginia 22040

G R E E T I N G S:

TO ANY AUTHORIZED OFFICER: You are hereby commanded in the name of the Commonwealth forthwith to arrest Allen Izadpanah, Defendant, c/o Raymond Benzinger, 2009 N. 14th Street, Suite 410, Arlington, Virginia 22201, and to produce the Defendant in the Court when found, or as soon thereafter as this Court may be in session, to show cause, if any, why Defendant should not be imprisoned, fined or otherwise punished for contempt for failure to appear before Commission Charles Dunn on March 9, 1992, at 2:30 P.M. to answer Debtor's Interrogatories.

Defendant, Allen Izadpanah, shall be held until he is to appear before Commissioner Dunn at 3925 University Drive, Fairfax, Virginia 22030 on May 12, 1992, at 3:00 P.M.

The following circumstances should be considered by the Judicial Officer determining bail: Defendant regularly leaves this jurisdiction to go to Saudi Arabia.

Given under my hand as Commissioner in Chancery of the Fairfax County Circuit Court, this _____ day of _____ 1992.

_____
Charles Dunn
Commissioner in Chancery

VIA FAX AND US MAIL

Raymond B. Benzinger, Esq.
Attorney at Law
2009 North 14th Street, #410
Arlington, VA 22201

RE: Sirex v. Aidant - Law No. 93228

Dear Mr. Benzinger:

I received your letter of October 6, 1992 (which was postmarked 10/8/92) today along with copies of four Requests for Subpoena Duces Tecum returnable to my office at 1:00 p.m. on October 13, 1992.

I suppose the Clerk may issue the subpoenas but please note that I did not reserve a time on my calendar for 1:00 p.m. on October 13, 1992. If the requests are directed to me to issue the subpoenas, I would want to take testimony or have an affidavit that is persuasive to me on how and why a judgment debtor should have certain documents subpoenaed; I would also provide enough time for the other side to be heard before a Circuit Court Judge since I think, at first, it is unusual or novel to issue a subpoena duces tecum of a judgment debtor to have documents produced at a Commissioner's Hearing. I do suppose there are certain cases

and reasons for it but, again, I would need some persuasive evidence therefor.

Hence, I decline to issue the subpoenas and, if already issued by the clerk, you will need to postpone the hearing date and time and, if you would, in order to promote judicial economy, have the documents returnable to the Clerk's Office. That way, the other side will have the time to take it up with a Circuit Court Judge if they are so advised and Commissioners' fees won't be incurred with the attendant question of who is responsible for
the Commissioner's fees.

Perhaps Judge Bach can rule on this matter on October 16, 1992.

Very truly yours,

Charles C. Dunn

Q. Okay. Were you aware then of the timing of the issuance of the subpoenas, or the service of the subpoenas, and that it was going to happen essentially days before an extended weekend, and days before the return of those subpoenas were required?

A. No, I don't think that was -- I think that was just unflutitious maybe. It was not the kind of thing where we held up the subpoena so that it would hit at a bad time. In fact, half the time we don't even know it is a long weekend, because we work them any way. those things sometimes just pass us by.

My recollection was that when I came up with idea that it was a let's do it, and let's do it ASAP type of thing, and without regard for -- you know, it is a long weekend, and let's wait until the last second.

Q. And was there any regard placed to the attorney, or in other words, myself,

on whom these subpoenas were going to be served?

A. My recollection, Mr. Gross, is that there was already a hearing scheduled, and I don't know why I think that. Maybe you can refresh my recollection on that, but my recollection was that there was already a hearing scheduled either before Mr. Dunn, or before Judge Bach, or something like that, and it was very, very close to --

Q. I will refresh your recollection. There were no hearings during the same time period that you are talking about.

A. Well, my recollection is that there was, and I don't know why I think that. It is just something in my head.

Q. So, was there a discussion about -- in the nature of, hey, we can serve these at a certain time and that are going to cause maximum problems to Mr. Gross?

A. Oh, no, Mr. Gross. This was a

question of that we needed to get this thing resolved, and we needed to do it now. there are some serious problems here, and I don't really want to say this, but I will be honest with the court.

We were quite frankly concerned that too much lead time would afford an opportunity to -- for mischief. let me say that in that way.

* * *

Law Office of
Raymond B. Benzinger, P.G.
A Professional Corporation
Suite 410
2009 North 14th Street
Arlington, Virginia 22201

Raymond B. Benzinger (703) 525-1362
Mary M. Jolma FAX (703) 525-2930

October 13, 1992

Via Facsimile and Mail

Commissioner Charles C. Dunn
Dunn, McCormack, McPherson & Maxfield
3925 University Drive
Fairfax, VA 22030

Dear Commissioner Dunn:

Apparently our letter of October 6, 1992 with attached subpoenas was not as self explanatory as I had hoped. To the extent my previous letter resulted in a miscommunication with the Commissioner, I regretfully apologize and submit the following clarification.

(1) The subpoenas requested were in fact issued by the clerk of the court.

(2) Those subpoenas were in fact served upon Messrs. Gross and Crowe.

(3) No hearing was contemplated or noticed by us. Nor was it contemplated

that the Commissioner needed to be present for the delivery the material subpoenaed. We merely followed the applicable statute which contemplates return of the documents subpoenaed to the Commissioner's office. Hearing was, however, scheduled on a motion before Judge Bach on October 16, 1992. We now learn that Judge Bach will not be available on that date.

(4) The statute referenced allows "any party" to obtain the documents which we subpoenaed.

(5) If there is any charge for receipt of the documents at the office of the Commissioner, we will assume responsibility for paying all appropriate charges.

(6) While we have received Motion(s) to Quash the subpoenas as to both Mr. Gross and Mr. Crowe, neither of those motions has been set for a hearing.

(7) We expect that the subpoenas will

be adhered to as a valid order of the court. We intend to move for a Rule to Show Cause if they are not honored.

(8) We understand that Judge Bach will not be available until next Tuesday. We therefore suggest to counsel of record, in the event the subpoenas are not honored, a hearing on the next regular motions day, October 23, 1992, to resolve all of these issues. We shall file notices this week as appropriate. If counsel have any objections to this date, we would expect to be notified immediately.

(9) We would respectfully request that opposing counsel agree to the hearing date of October 23, 1992 instead of October 16, 1992. We further request that both Mr. Crowe and Mr. Gross agree to be present on October 23, 1992 in lieu of the subpoena date (10/16/92) for that hearing on the opposing motion.

Again, Commissioner Dunn, I apologize

for any misunderstanding that may have occurred. I was merely following what I thought was permitted by the statute.

Respectfully submitted,

/S/

Raymond B. Benzinger

RBB:md

cc: James Kurz, Esquire
Edward Gross, Esquire

Law Office of
Raymond B. Benzinger, P.G.
A Professional Corporation
Suite 410
2009 North 14th Street
Arlington, Virginia 22201

Raymond B. Benzinger (703) 525-1362
Mary M. Jolma FAX (703) 525-2930

October 6, 1992

Commissioner Charles Dunn
3925 University Drive
Fairfax, Virginia 22030

Re: Sirex USA, Inc. v. Aidant Inc. et al; At Law No. 93228

Dear Commissioner Dunn:

There are enclosed courtesy copies of four Subpoenas Duces Tecum for dual purposes. The Subpoenas order production of certain documents at your office on October 13, 1992, at 1:00 p.m., pursuant to the authority of Virginia Code §8.01-506.1 and further request that the witness appear on October 16, 1992 for a hearing before the Honorable Judge Bach, on exceptions to your report.

We greatly appreciate your services as a Commissioner in this complex and

difficult case. Copies of the Subpoenas are furnished to you herewith in order that you will be completely informed of proceedings in this matter.

Respectfully submitted,

/S/

Raymond B. Benzinger
Attorney for Allen A. Izadpanah

RBBmd
Enclosure
cc: Edward Gross, Esquire

Law Office of
Raymond B. Benzinger, P.G.
A Professional Corporation
Suite 410
2009 North 14th Street
Arlington, Virginia 22201

Raymond B. Benzinger (703) 525-1362
Mary M. Jolma FAX (703) 525-2930

October 15, 1992

James S. Kurz, Esquire
Kurz, Koch & Doland
Suite 260
1250 24th Street, N.W.
Washington, D.C. 20037

Re: At Law #93228

Dear Mr. Kurz:

I have your letter dated October 12, 1992 in which you inform me that Mr. Crowe will not be obeying the subpoenas. You also state that a motion is set to be heard tomorrow October 16, 1992, to quash the subpoenas. I have not received any notice of such a hearing except through your letter of October 12, i.e., no proper Rule F Notice has been filed or delivered to me. See Form CCR-201-202, paragraph 5. Nor did your "notice" give me the required time within which I might prepare.

To be sure, I checked with the clerk's office and the docket for tomorrow and learned that your "motion" is not on for hearing.

Lastly, I have removed the motion for 30-day stay from tomorrow's motions day docket to the October 30, 1992 docket when Judge Fortkort will be available. The appropriate Praecipe/Notice is enclosed.

If you have any questions concerning the foregoing, please feel free to contact me.

Sincerely,

/S/

Raymond B. Benzinger

Encl.
RBB:mdd

Dunn, McCormack, MacPherson & Maxfield
Attorneys at Law
3925 University Drive
Fairfax, Virginia 22030

Charles C. Dunn
Brian M. McCormack
H.L. MacPherson III
Charles J. Maxfield*
*Admitted Also in
The District of Columbia

591-6055
Area Code 703
Telecopier:
591-5151

October 14, 1992

Raymond B. Benzinger, Esq.
Attorney at Law
2009 North 14th Street, #410
Arlington, VA 22201

Re: Sirex v. Aidant - Law No. 93228

Dear Mr. Benzinger:

Thank you for your letter of clarification dated October 13, 1992.

I think it does clarify and take care of all of my concerns. I am assuming that your request in paragraph (9) on page two is directed to counsel and not to me since I have no authority to direct when motions will be heard by the Court.

Again, I do appreciate your letter clearing up my concerns.

Very truly yours,

/S/

Charles C. Dunn

CCD/snt

cc: Edward Gross, Esquire

October13, 1992

Via Facsimile and Mail

Commissioner Charles C. Dunn
Dunn, McCormack, MacPherson & Maxfield
3925 University Drive
Fairfax, Virginia 22030

Dear Commission Dunn:

Apparently our letter of October 6, 1992 with attached subpoenas was not as self explanatory as I had hoped. to the extent my previous letter resulted in a miscommunication with the Commissioner, I regretfully apologize and submit the following clarification.

...

(2) Those subpoenas were in fact served upon Messrs. Gross and Crowe.

...

(7) We expect that the subpoenas will be adhered to as a valid order of the court. We intend to move for a Rule to Show Cause if they are not honored.

Again, Commissioner Dunn, I apologize for any misunderstanding that may have occurred. I was merely following what I thought was permitted by the statute.

Respectfully submitted,

Raymond, B. Benzinger

RBB:md

cc: James Kurz, Esquire
Edward Gross, Esquire

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

AFFIDAVIT

EDDIE CHU, hereby deposes and says:

1. I am the President of Sirex, U.S.A., Inc.

2. Sirex U.S.A. sold goods to AIDANT, INC. under terms which included individual guarantees of payment.

3. Goods were not paid for and collection proceedings were instituted and judgment obtained. (Sirex USA, Inc. AIDANT, Inc., et al. Law # 93228)

4. Partial payment was recovered.

5. The balance of the judgment was subsequently assigned to Federal Computer Corporation for additional consideration on July 29, 1991. See attached.

6. At the time of assignment, less than the full judgment had been paid.

7. The original action was maintained by local council Edward Gross on behalf of Sirex.

8. Subsequent to the assignment, counsel acted on behalf of the assignee of the judgment.

DATED: New York, New York
October 29, 1992

_____
EDDIE CHU

Sworn to before me this
29th day of October, 1992

_____

Notary Public

EXCERPT OF TRANSCRIPT
HEARING BEFORE JUDGE BRUCE F. BACH
MARCH 30, 1993

*****

[Testimony of Mary Jolma]

Q. Did you look in the files to see if there was an accounting in the files?

A. Yes, I did.

Q. And did you not see my June, 1991, letter to Mr. Benzinger setting out an

accounting of monies owed?

A. I did indeed.

*****

THE COURT: I will order that Mr. Benzinger pay Mr. Gross $10,000; and pay Mr. Kurz $7,500.

I will find that Mr. Gross' costs of -- and I find those to be reasonable attorneys fees, and I find that Mr. Gross' costs of quashing the subpoena is $3,000. Mr. Kurz's costs to quashing the subpoena is $1,500; the difference on the related costs of bringing these sanctions motions.

I say that so that the issue is clear. In my opinion, it doesn't make any sense at all to have a sanctions statue. For example, who would ever bring a $250, or $300, or $1,000 sanction if the other side could costs their client ten times that amount, or five times that amount, or even that amount again in additional attorneys fees in order to bring it.

So, I think that this statute contemplates reasonable fees to bring this sanction motion, and we have been here a number of days on it, and we are here again today, all day today in court, and I think that is a reasonable fee.

As far as Mr. Charlton, I think I have stated before my reasons for not including him in the sanctions, but again if there is any appeal, just like I have stated, all the other figures I will say without question that he was as much or more at fault in this than Mr. Benzinger. He just does not fall under this particular sanction statute.

And I have given my reasons previously for the sanction, but in addition to everything else, to me and at

least as important as filing these subpoenas, was what was asked for, and the way it was asked, and the timing of it.

And in my opinion it was done in a way to bring about maximum disruption and trouble to the other side, as opposed to a way that gentlemen, I suppose, could and should work these problems out.

It was as I said in the other hearing extreme hardball, and I thing that is sanctionable; and let me say this again, and I think I said it before, but I am not indicating that I feel that Mr. Benzinger did anything unethical, or even anything -- well, I don't know what in bad faith means, but I think he was as he saw it vigorously representing his client, and that sort of vigorous representation I think is and should be a thing of the past.

Supreme Court, U.S.
FILED
JUN 15 1994
OFFICE OF THE CLERK

(3)

No. 93-1870

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1993

RAYMOND B. BENZINGER,
AIDANT, INC.,
ALLEN A. IZADPANAH,
for himself and
for Aidant, Inc.
and
WALTER T. CHARLTON,

Petitioners

vs.

SIREX, USA, INC., et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT FOR FAIRFAX COUNTY, VIRGINIA

REPLY BRIEF FOR PETITIONERS

WALTER T. CHARLTON
Counsel of Record
2009 North 14th Street
Suite 410
Arlington, Virginia 22201
(703) 525-8387

Counsel For
All Petitioners

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Other Authorities:

Virginia Supreme Court Rules 4.5(b)(5) and 4.9 . . . . . 15, 16

Rule 4.9 (b) 16

Introduction to This Reply Brief:

Respondents seek to cast this case as a mere collection action in which petitioners should be sanctioned for failing to recognize the finality of State Court Judgments.

This position is false and fraudulent. On the contrary, this case represents a trampling, utter destruction, of substantial constitutionally guaranteed civil rights. The most egregious of those violations is the denial of the subpoena process (though totally authorized by state law-- Va. Code § 8.01-506.1) and punishment of counsel for use of that process, even though, as a result, the frauds complained of in this case were exposed and the subpoenas were never honored. The Court then ignored those frauds in favor of enforcing its own judgments which were VOID for want of jurisdiction on the underlying extra-territorial levy.

If allowed to stand, the result is the superseding of Constitutionally Guaranteed rights in favor of enforcement of jurisdictionally and procedurally flawed, hence VOID, judgments on a debt that does not exist by persons charged under state law with fiduciary duties not to act as they did in defrauding their ward. This result opens the door for untold mischief which is inimical to our entire judicial history. Also, no state process should be allowed to supersede federally guaranteed rights. For this reason Certiorari should be granted.

SUMMARY OF ARGUMENT FOR GRANTING CERTIORARI:

In this case Petitioner Izadpanah, a resident of Maryland, was deprived of this property rights by an extra-territorial attachment by a Virginia Circuit Court without any valid writ of attachment ever

being issued against him[1]/. Thereafter, his stock was purportedly "sold" at an "auction" which took place without notice to him or his counsel. Further, the seller and the buyer were the same person (Federal Computer Corporation-FCC -covertly using the name of Sirex as the seller). Therefore, there could have been no legal "transfer" at the time of the purported "sale". Moreover, at the time of all of these transactions FCC stood, by virtue of a final Virginia Supreme Court Judgment, in Boeing[2]/ in the position of a fiduciary with respect to both shareholder Izadpanah and the original debtor corporation, Aidant, Inc. FCC had received monies from Aidant and used those moneys to conduct the disenfranchisement of the shareholder

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[1]/ The writ actually issued was against the wrong judgment, not against him.

[2]/ Izadpanah v. The Boeing Joint Venture, 243 Va. 81, 412 S.E.2d 708 (1992).

presently suing FCC and the other fiduciaries for theft and misapplication of funds.

Respondents own brief, also in the name of the purported creditor, Sirex, demonstrates the truth of the gravamen of Petitioners' allegations as to the fraud alleged. There can be no question as to these basic facts.

If as this case so far holds, a massive fraud can violate our entire concept of property law, and the court can bar access to the subpoena process which actually uncovered that fraud and punish counsel with massive sanctions, no man's property is safe within these United States. If the proposition for which this case stands, dishonest persons with access to attorneys willing to bend facts will have unlimited license to steal. That is what this case is really about. For this reason, this case is of vital importance to

our system of justice and certiorari should be granted.

Counter Statement of Respondents Purported Facts:

The real parties in interest in this case, fiduciaries who misappropriated an entire corporation, Aidant, Inc., with its several millions in corporate assets and an 89 million dollar ($89,000,000.) Government contract which was diverted to their own corporation[3]/, have the brass to continue

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[3]/ The Petitioner Izadpanah claimed in his derivative lawsuit, one of the component cases of this petition, massive theft of corporate assets by Respondents herein. That claim was upheld by the Virginia Supreme Court which reversed and remanded Boeing, supra, to require Respondents herein to prove in the Circuit Court the alleged misapplication of property transactions were "fair to the corporation". (See decision in Appendix d1 to d5 Petition). However, due to the adulteration of the Circuit Court collection process complained of herein, Petitioner Izadpanah has been deprived of his stock in Aidant, Inc, and also his right, via dismissal of the derivative suits, to require that "fair" accounting via the stockholders derivative suits he brought. Of course a part of that "fair accounting" would have been payment by the controlling fiduciaries out of corporate

to misrepresent the most basic fact of this case even before this court.

In this case Respondents seek to divert the main thrust of Petitioner's Petition, from claims based upon Fifth Amendment deprivation of a principal shareholder's (Izadpanah) property rights[4]/ in stock in a close corporation, Petitioner Aidant, Inc., worth approximately three million dollars, to the failure of Petitioners' counsel to accept as final defective and fraudulent judgments

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assets of the underlying guaranty debt. This, of course, is an inconceivable, outrageous and unconstitutional result of misapplication of a state law in contravention of Constitutional standards.

[4]/ Those property rights are:

1. The ownership of the stock itself, purportedly "lost" through an extra-territorial levy in Maryland where the Virginia Court had no jurisdiction; and

2. The right to continue the shareholder's stockholder derivative suit (filed before he "lost" the stock) for theft of over $3 million in Aidant cash and properties.

obtained by Respondents by a purported forced sale for the amount of $500. which effectively stripped Petitioner of all stock ownership interests, and his ability to continue his stockholder's derivative suit to recover the diverted corporate assets.

Respondents continue their previous strategy of character attacks to oppose this petition for certiorari. In doing so they continue to assert the following material false propositions:

1. That Sirex U.S.A., Inc. is now a party to this case. It is not.

2. That Petitioner Izadpanah now owes Sirex money. He does not. Any debt he had was on a loan guaranty. That debt was fully paid by FCC, a fiduciary/trustee using funds obtained from Aidant, Inc. for which FCC was a custodian/fiduciary. Nor did Izadpanah owe FCC money, see 3 (below).

3. That Petitioner Izadpanah, who

had filed stockholder's derivative suits for theft by the Respondents FCC etc. herein, owes or owed FCC (a fiduciary doing the thefts) money. He does not and never did.

4. That the discovery by Petitioners of the fact of FCC's collection actions of the alleged "Sirex debt" in the name of Sirex in breach of its fiduciary duty to its fellow shareholder does not warrant use of subpoenas to prove the existence of the ruse. The Virginia collection code, 8.01-506.1, authorizes this action by an alleged debtor during the collection process.

5. That the extra-territorial service of process and the ex parte judgment acquired by fraud in the court should be ignored by Petitioners' counsel because those judgments are subject to the concept of "finality of judgments". Judgments acquired where the court has no jurisdiction or acquired by fraud on the

court are always subject to collateral attack at any time.

(6) There never was a time when the legal or moral position of either Charlton or Benzinger was impeached by the testimony of Mary Jolma, Esq. The facts are directly opposite. Respondents' brief includes only partial transcript extracts of Mrs. Jolma's testimony on the question of seeing a letter from Gross purporting to show the balance due on the debt. The partial transcript submitted by "Respondent" is misleading. Mrs. Jolma's testimony supports entirely Petitioner's position that no accounting was ever made, much less one to be believed from a counsel conducting these fraudulent collection activities after opposing counsel learn of the existence of the deception. This question is not worthy of further discussion, except to observe that the complete transcript on that subject is

included as appendix f1 etc. should the court be interested in further exploring this twisting of the facts by Respondents.

(7) Respondent's Opposition States the Events of this case substantially our of sequence:

The correct sequence of events was:

1. Misapplication of funds from Aidant, Inc by the fiduciaries.

2. The debt was "paid in full (12/90)".

3. Petitioner Izadpanah filed his derivative lawsuit.

4. Additional funds were paid to Sirex by FCC to purchase the balance of the consent judgment against Izadpanah, July 29, 1991.

5. Beginning of the collection process in the name of Sirex, by FCC.

6. Extraterritorial attachment occurred, August 31, 1991.

7. Boeing, supra, was decided on

January 10, 1992 by the Virginia Supreme Court, determining that FCC, Hummel and Crowe had the duty to prove the fairness of all conflict of interest transactions involving Aidant (Appendix d1-d5).

8. Discovery in late 1992 that no debt was due Sirex and that FCC was collecting party.

9. Attempts to get subpoenas to prove no debt balance due October, 1992.

10. Assessment of Sanctions for issuance of subpoenas, March 1993.

(8) Specific misstatements of fact in Respondent's brief, are addressed seriatim following.

1. Opp. P. 4 ¶ 1 "Issuing Subpoenas for an improper purpose".

In fact the subpoenas were entirely proper and after explanation to the collection Commissioner Mr. Dunn, the Commissioner expressed satisfaction with the explanation. (See Appendix j1, 2

Commissioner's letter to Raymond Benzinger).

2. Opp. P. 5 ¶ 2 Izadpanah "fled his creditors".

In fact Izadpanah then rendered penniless by Respondent's acts, obtained a temporary job in Saudi Arabia.

3. Opp. P. 5 F/N 1 "Izadpanah has never prevailed on a single substantive issue".

In fact, Izadpanah won the difficult Virginia case of Izadpanah v. The Boeing Joint Venture, (supra) reversed and remanded for proof by Respondents herein that alleged misapplication of funds were "fair" to the corporation Aidant, Inc.

4. Opp. P. 6 ¶ 2. "the elusive Izadpanah proved to be 'collection proof'"

The reiteration of self-serving derogatory information while being subjected to interrogatories after stripping him of his stock worth 3 or 4

million dollars by Sirex who at that time, no longer had any interest in this case, is utterly outrageous.

Gratuitously, counsel sees fit to mention "Gucci loafers". That is not only untrue and irrelevant but is never mentioned in the record.

5. Opp. P. 7 ¶ 2. This [levy] stock turnover order was never appealed and is final.

In fact the stock turnover order was appealed to the Virginia Supreme Court which denied review. Further, it was defective procedurally, based on the wrong writ, and extra-territorial in effect (on Maryland property)--hence void for want of jurisdiction by the court.

6. Opp. P. 7 ¶ 2. "Izadpanah's stock in Aidant, Inc. was sold after notice of the sale was given to all interested parties, including Izadpanah."

This statement is outrageously

false.

a. No notice was given to Izadpanah or his counsel.

b. No "sale" ever took place because the attaching party (FCC) was the same party as the "purchaser" FCC; and further

c. No debt was due at the time.

d. The name of the seller--purportedly Sirex--was a false representation of interest.

7. Opp. P. 8 ¶ 2. "Izadpanah made no offer on the stock, and made no effort to pay his indebtedness on the underlying judgment."

This statement is false and misleading for these reasons:

a. Neither Izadpanah nor his counsel ever knew of the purported sale--which took place one day before the purported advertised day, thus they could take no action.

b. The "sale price" was $500, on

stock worth over $3 million.

c. No sale took place because the buyer and the seller were the same persons.

8. Opp. P. 10 ¶ 2. "[Petitioners] served subpoenas duces tecum upon: Izadpanah's judgment creditor", . . .

In fact, as it turns out the subpoenas were served upon the former judgment creditor.

9. Opp. P. 11 ¶ 2. "The procedure invoked [by petitioners] was improper under the Virginia Supreme Court rules of procedure (which provide 21 days to respond to any request for documents). See, e.g. Virginia Supreme Court Rules 4.5(b)(5) and 4.9."

This is wrong. Virginia collection procedures relied upon specifically authorize a shorter time for response where collection procedures are on-going. See Virginia Code 8.01-506.1 which states:

*** "However, notwithstanding the provisions of Rule 4:9[5]/, a subpoena duces tecum issued pursuant to this section may (i) be directed to a party to the case and (ii) be issued by a commissioner and may direct that evidence and any custodians subpoenaed be produced before the commissioner." This is exactly what Petitioners did.

10. Opp. P. 14 ¶ 1. "In 1991 Izadpanah lost all of his stock in Aidant, Inc. and therefore had no standing to initiate his various stockholder derivative actions."

In fact, Izadpanah initiated those lawsuits long before he allegedly "lost his stock".

Opp. P. 14 ¶ 2. "... his attorneys have repeatedly attempted to *** regain

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[5]/ Rule 4.9 (b) requires 21 days for production of documents. However, by the specific provisions of Code § 8.01-506.1 this rule is not applicable to the facts here.

standing to file derivative suits".

This is false. He undisputedly owned the stock at the time he filed his derivative suits.

11. Opp. P. 18 ¶ 1. "[Benzinger] either knew or suspected that his subpoenas would be quashed, and therefore sought to maximize disruption to Respondents and their attorneys using an improperly short return period to achieve these ends."

That conclusion is utterly ridiculous. In fact, the subpoenas have never been responded to and the Commissioner, upon being given a complete explanation by Benzinger stated he was completely satisfied with Benzinger's explanation of the process used, he said ... "clarify and take care of all of my concerns"... (Appendix page i 1).

12. Opp. P. 19 - 20. "Mary Jolma [Esq.], admitted that Sirex counsel [Gross] had been given a full written accounting of

the judgment balance."

"Having been impeached by their own associate"

These statements are intentionally false and misleading.

a. Gross didn't represent Sirex.

b. No accounting was ever given.

c. No money was owed.

d. There was no impeachment--to so state is false.

See transcript of Mary Jolma's testimony Appendix f 1 to f 15 which was truncated in Respondent's opposition and then relied upon to show the false result espoused.

13. Opp. P. 20 ¶ 3. "Petitioner's evidence at trial below included an Affidavit by Sirex U.S.A.'s President Eddie Chu". (Gross Appendix a 9).

a. This statement is wrong. It was not Petitioner's evidence at trial below. Rather, that affidavit was submitted

directly to the court by Mr. Gross.

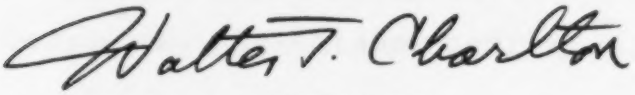
b. That affidavit was dated after the subpoenas were requested.

c. That affidavit does not contradict Petitioner's position. Rather it entirely supports the proposition that after the date of July 29, 1991, when FCC bought the judgment, the debt to Sirex was gone, extinguished and over. No amount of rhetoric can change that fact.

Conclusion:

For all of the foregoing reasons, the result in this case offends the principles of fair play and property rights of our federal constitution, specifically the due process clauses of the First and Fourteenth Amendments to the Constitution, and the right to seek judicial redress (for the corporate thefts) which was denied petitioners when the subpoenas were quashed and sanctions assessed.

Respectfully submitted,



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MARY JOLMA,

DIRECT EXAMINATION

BY MR. BENZINGER:

Q. Would you state your name, please?

A. My name is Mary Jolma.

Q. And where are you employed?

A. I am employed with the law offices of Raymond B. Benzinger, in Arlington, Virginia.

Q. And how long have you been there?

A. Almost four years.

***

Q. Ms. Jolma, did you play any role in the SIREX case?

A. I did indeed, but not until very late though. I brought in the research, and produced the research, and consulted on a particular question.

Q. And what was that question?

A. The problem that was being had by Mr. Benzinger and Mr. Charlton was an

inability to get a hold of certain information, and through some bizarre sets of circumstances, we started to come up with some things that weren't quite right.

In an effort to resolve that, I was asked how a debtor could come to obtain documents that would answer the kinds of questions that we were asking; and I am the firm researcher, and that's what I do best. I can find almost any needle in any haystack anywhere. It is just a knack that I have.

And I did the research on this one, and came up with a particular statute, and ---

MR. GROSS: Your honor, at this point I think I am going to object. We are going back again through the isuance of the subpoenas, and you have already ruled that they were improper, and with all due respect, they want to put her on basically to run through all of that again. We had

two hours of hearings --

THE COURT: Overruled. I am not going to run through all of that again, but I think she can, I guess, say what she reported to Mr. Benzinger.

BY MR. BENZINGER: (Resuming)

Q. I have passed up documents to you. Would you explain to the court what they are, please?

A. Yes sir. There are two pieces of paper here, Your Honor. One of them says 1978 Version at the top, and one says 1986 Amendment. I found the 1986 Amendment of 8.01-506.1, You Honor, and in reading that it appeared to do what we were interested in doing.

Namely, we had an ongoing Commissioner's Interrogatory proceeding, and so when I read this statute, this is what I read it to be. In any proceeding under the provisions of 8.01-506, which was the ongoing Interrogatories that were

happening at the time, a subpoena duces tec[t]um [sic] may be issued for books of accounts or other writings containing material evidence.

Now, the kinds of things that we were looking for were who owned -- who was informed of this judgment, and we were asking direct questions about how much was owed, because we had now found a piece of paper from Milikan and Michaels saying that there was nothing owed on this thing.

You know, we are sitting around scratching our heads, and wondering why we are going through this if this is in fact paid. It was a question that had to be asked.

It also says that we don't have to -- it says not withstanding the provisions of 4:9, a subpoena duces tecum issued pursuant to this section may be directed to a party to the case.

Who is the party in the case at

the time? Clearly, as far as we knew, it was SIREX, and as far as we knew also, it was Mr. Crowe. It was sometime after we issued the subpoenas that we found out that Mr. Crowe's judgment had been released, and that we had stumbled across that one day going though the file.

We had a Commissioner, and if you read the subpoenas carefully, it does not ask the people to appear. It asks that the documents be returnable to the Commissioner, unlike -- or not unlike what you do with the Clerk of the Court. You know, please return this to the Clerk of the Court. It does not mean that you physically have to appear.

If the subpoena duces tecum is against a plaintiff who is a non-resident of the Commonwealth, the service may be on the attorney-at-law. Well, clearly SIREX was a non-resident of the Commonwealth. They were from New York. So, we served it

upon Mr. Gross.

It also says that notwithstanding the provisions of Rule 4:9, and it provides for a variation on themes on how the subpoena duces tectum could be issued, despite what 4:9 says.

So, it permits us to vary outside the time frames of 4:9, and the procedures set out in 4:9. To be sure I had this right, Your Honor, and I do what I often do, and that is that I had a question about one particular phrase in here, and it was -- it doesn't say who gets to issue the subpoena. It doesn't say which party to the case, or which indiviual.

And I went and I looked back, Your Honor, to the 1978 prior version of this, and I think this one is real clear as to what is going on. It says that in any proceeding under the provisions of 8.01-506, a party may file in the Clerk's ofice in --

MR. KURZ: Your Honor, I am going to object. This is legal argument. If Ms. Jolma wants to testify as to what she did, then that's fine, but not her argument on her interpretation of the law.

THE WITNESS: Well, I did go back to 506.1 in its original version, Your Honor, and out of that I think it is very clear that the intent of this was to enable a debtor to find out how much he owes, and to find out anything relevant to his judgment.

And I reported that back to Mr. Benzinger, and based on that research, I felt that we had a good faith basis in fact, based on what we had heard, and what we had learned, and what we thought we knew, and the inconsistencies at the time, and now we had a good basis in the law.

We had an ongoing Commissioner's proceeding, and the statute that allowed us to do it, and that's why we went forward

the way that Mr. Benzinger did.

MR. BENZINGER: If you would mark this as Exhibit 3.

(At this time, Defendants Exhibit Number #3 was marked for identification.)

BY MR. BENZINGER: (resuming)

Q. Ms. Jolma, you have mentioned the document that you have before you at the time that you did your research. I show you a document which has been marked for identification as Exhibit #3, and --

MR. GROSS: I am going to object, Your Honor. Again, we are going back into the whole case, and reopening it. It is one thing to ask her what she did, and how it got to him, and so on.

I am not sure how that is relevant either, but now we are going back into the whole case, and reopening the issuance of the subpoenas, Your Honor. If we we are going to do that, then we are going to have to put on rebuttal.

THE COURT: I really don't know what he has shown her. I mean, I don't know what --

MR. GROSS: He has shown her the Milikan and Michael document again, which was presented to you previously at the prior sanctions motions, and --

THE COURT: Is this the one that says account closed, or something like that?

MR. GROSS: Yes, and going into all of that all over again.

THE COURT: Objection sustained.

BY MR. BENZINGER: (Resuming)

Q. Once you found the statutes, and did your research, then what did you do next?

A. I reported it back to you.

****

Q. Did you look in the files to see if there was an accounting in the files?

A. Yes, I did.

Q. And you did not see my June, 1991, letter to Mr. Benzinger setting out an accounting of monies owed?

A. I did indeed.

Q. You did see that?

A. I did, sir. It is my recollection of that letter, Your Honor, that it merely stated a balance. It says this much is owed in the judgment. I think the question that we have been asking from my recollections was how they got to the numer, and there is nothing in my file, and nothing in that letter that I recall that says how that number was arrived at from the original $40,000 amount.

* * *

Q. Now, you had access to the court records, isn't that correct, in terms of what the amount of the judgment was, and so on?

A. Sure. It is public record.

Q. And you had my accounting as to

the balance, and in terms of what the amount of the judgment was?

A. Sure. I had your statement of what your balance was; yes, sir.

Q. Okay. Were you involved at all in the determination of when -- of the timing of the subpoenas, and when they should be issued?

A. When?

Q. Yes.

A. Well, I think the decision to issue the subpoenas -- let's see if I can remember that conversation.

I think it was sort of an ASAP type thing. Let's get these things issued as soon as possible, and it is also my recollection that there might have been a court date coming up, but that's a vague recollection.

I can't remeber why I think that, but that is sort of sticking in my mind; that there was something already coming up,

and this thing hit the fan, and all of this sort of happened all at the same time, and were very close together.

When this came to us, I think it was around the end of September, and I did the research about the same time. Mr. Charlton had done some telephone research, and had gotten his version together for me to discuss with him.

They discussed it with me, and I spent, you know, three or four hours checking on this stuff, and then the --

Q. My question was, Ma'am, were you involved in the determination of the timing of when these subpoenas would be issued and served?

A. I think I was to the extent that I was part of the conversation when the decision was made to get this stuff out, and once I came up with it, to get these things out ASAP, and I don't think there was any other --

Q. Okay. Were you aware then of the timing of the issuance of the subpoenas, or the service of the subpoenas, and that it was going to happen essentially days before an extended weekend, and days before the return of those subpoenas were required?

A. No, I don't think that was -- I think that was just unflutitious maybe. It was not the kind of thing where we held up the subpoena so that it would hit at a bad time. In fact, half the time we don't even know it is a long weekend, because we work them any way. those things sometimes just pass us by.

My recollection was that when I came up with idea that it was a let's do it, and let's do it ASAP type of thing, and without regard for -- you know, it is a long weekend, and let's wait until the last second.

Q. And was there any regard placed to the attorney, or in other words, myself,

on whom these subpoenas were going to be served?

A. My recollection, Mr. Gross, is that there was already a hearing scheduled, and I don't know why I think that. Maybe you can refresh my recollection on that, but my recollection was that there was already a hearing scheduled either before Mr. Dunn, or before Judge Bach, or something like that, and it was very, very close to --

Q. I will refresh your recollection. There were no hearings during the same time period that you are talking about.

A. Well, my recollection is that there was, and I don't know why I think that. It is just something in my head.

Q. So, was there a discussion about -- in the nature of, hey, we can serve these at a certain time and that are going to cause maximum problems to Mr. Gross?

A. Oh, no, Mr. Gross. This was a

question of that we needed to get this thing resolved, and we needed to do it now. there are some serious problems here, and I don't really want to say this, but I will be honest with the court.

We were quite frankly concerned that too much lead time would afford an opportunity to -- for mischief. let me say that in that way.

* * *

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October 13, 1992
Via Facsimile and Mail

Commissioner Charles C. Dunn
Dunn, McCormack, McPherson & Maxfield
3925 University Drive
Fairfax, VA 22030

Dear Commissioner Dunn:

Apparently our letter of October 6, 1992 with attached subpoenas was not as self explanatory as I had hoped. To the extent my previous letter resulted in a miscommunication with the Commissioner, I regretfully apologize and submit the following clarification.

(1) The subpoenas requested were in fact issued by the clerk of the court.

(2) Those subpoenas were in fact served upon Messrs. Gross and Crowe.

(3) No hearing was contemplated or noticed by us. Nor was it contemplated

that the Commissioner needed to be present for the delivery the material subpoenaed. We merely followed the applicable statute which contemplates return of the documents subpoenaed to the Commissioner's office. Hearing was, however, scheduled on a motion before Judge Bach on October 16, 1992. We now learn that Judge Bach will not be available on that date.

(4) The statute referenced allows "any party" to obtain the documents which we subpoenaed.

(5) If there is any charge for receipt of the documents at the office of the Commissioner, we will assume responsibility for paying all appropriate charges.

(6) While we have received Motion(s) to Quash the subpoenas as to both Mr. Gross and Mr. Crowe, neither of those motions has been set for a hearing.

(7) We expect that the subpoenas will

be adhered to as a valid order of the court. We intend to move for a Rule to Show Cause if they are not honored.

(8) We understand that Judge Bach will not be available until next Tuesday. We therefore suggest to counsel of record, in the event the subpoenas are not honored, a hearing on the next regular motions day, October 23, 1992, to resolve all of these issues. We shall file notices this week as appropriate. If counsel have any objections to this date, we would expect to be notified immediately.

(9) We would respectfully request that opposing counsel agree to the hearing date of October 23, 1992 instead of October 16, 1992. We further request that both Mr. Crowe and Mr. Gross agree to be present on October 23, 1992 in lieu of the subpoena date (10/16/92) for that hearing on the opposing motion.

Again, Commissioner Dunn, I apologize

for any misunderstanding that may have occurred. I was merely following what I thought was permitted by the statute.

Respectfully submitted,

/S/

Raymond B. Benzinger

RBB:md

cc: James Kurz, Esquire
Edward Gross, Esquire

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October 6, 1992

Commissioner Charles Dunn
3925 University Drive
Fairfax, Virginia 22030

Re: Sirex USA, Inc. v. Aidant Inc. et al; At Law No. 93228

Dear Commissioner Dunn:

There are enclosed courtesy copies of four Subpoenas Duces Tecum for dual purposes. The Subpoenas order production of certain documents at your office on October 13, 1992, at 1:00 p.m., pursuant to the authority of Virginia Code §8.01-506.1 and further request that the witness appear on October 16, 1992 for a hearing before the Honorable Judge Bach, on exceptions to your report.

We greatly appreciate your services as a Commissioner in this complex and

difficult case. Copies of the Subpoenas are furnished to you herewith in order that you will be completely informed of proceedings in this matter.

Respectfully submitted,

/S/

Raymond B. Benzinger
Attorney for Allen A. Izadpanah

RBBmd
Enclosure
cc: Edward Gross, Esquire

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October 15, 1992

James S. Kurz, Esquire
Kurz, Koch & Doland
Suite 260
1250 24th Street, N.W.
Washington, D.C. 20037

Re: At Law #93228

Dear Mr. Kurz:

I have your letter dated October 12, 1992 in which you inform me that Mr. Crowe will not be obeying the subpoenas. You also state that a motion is set to be heard tomorrow October 16, 1992, to quash the subpoenas. I have not received any notice of such a hearing except through your letter of October 12, i.e., no proper Rule F Notice has been filed or delivered to me. See Form CCR-201-202, paragraph 5. Nor did your "notice" give me the required time within which I might prepare.

To be sure, I checked with the clerk's office and the docket for tomorrow and learned that your "motion" is not on for hearing.

Lastly, I have removed the motion for 30-day stay from tomorrow's motions day docket to the October 30, 1992 docket when Judge Fortkort will be available. The appropriate Praecipe/Notice is enclosed.

If you have any questions concerning the foregoing, please feel free to contact me.

Sincerely,

/S/

Raymond B. Benzinger

Encl.
RBB:mdd

Dunn, McCormack, MacPherson & Maxfield
Attorneys at Law
3925 University Drive
Fairfax, Virginia 22030

Charles C. Dunn
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October 14, 1992

Raymond B. Benzinger, Esq.
Attorney at Law
2009 North 14th Street, #410
Arlington, VA 22201

Re: Sirex v. Aidant - Law No. 93228

Dear Mr. Benzinger:

Thank you for your letter of clarification dated October 13, 1992.

I think it does clarify and take care of all of my concerns. I am assuming that your request in paragraph (9) on page two is directed to counsel and not to me since I have no authority to direct when motions will be heard by the Court.

Again, I do appreciate your letter clearing up my concerns.

To be sure, I checked with the clerk's office and the docket for tomorrow and learned that your "motion" is not on for hearing.

Lastly, I have removed the motion for 30-day stay from tomorrow's motions day docket to the October 30, 1992 docket when Judge Fortkort will be available. The appropriate Praecipe/Notice is enclosed.

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Again, I do appreciate your letter clearing up my concerns.

Very truly yours,

/S/

Charles C. Dunn

CCD/snt

cc: Edward Gross, Esquire